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安全理事会

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2002 年 10 月 15 日秘书长给安全理事会主席的信

增编

2003 年 6 月 20 日秘书长给安全理事会主席的信

谨提及安全理事会 2003 年 1 月 24 日第 1457（2003）号决议，其中安理会请我安排印发秘书长 2002 年 10 月 15 日的信中所转递的非法开采刚果民主共和国自然资源和其他形式财富问题专家组的报告(见 S/2002/1146，附件)点名的个人、公司和国家的反应意见，作为该报告的附文。我并提及安全理事会主席 3 月 24 日的说明(S/2003/340)，其中安理会将印发这些反应意见的时间推迟到 2003 年 6 月 20 日。

谨随信转递专家组报告(S/2002/1146)的附文，* 其中载有专家组报告点名的 58 个人、公司和国家的反应意见。这些意见是专家组主席马哈茂德·卡西姆先生(埃及)在 6 月 17 日的信中汇编并提交给我的。请提请安理会成员注意所附资料为荷。

科菲·安南(签名)

* 附件的附文仅以提交文件的语文印发。

03-40376 (C) 250603 260603

附件

2003 年 6 月 17 日非法开采刚果民主共和国自然资源和其他形式财富问题专家组主席给秘书长的信

兹提及安全理事会 2003 年 1 月 24 日第 1457（2003）号决议，其中安理会将非法开采刚果民主共和国自然资源和其他形式财富问题专家组的任务期限延长六个月。安理会该项决议第 11 段请专家组报告(S/2002/1146)点名的个人、公司和国家提出反应意见，供作为报告的附文印发。安全理事会主席在 2003 年 3 月 24 日的说明(S/2003/340)中将决议规定的印发时间推迟到 2003 年 6 月 20 日。

谨向阁下提交希望印发其反应意见的各方清单(附文 1)以及反应意见汇编(附文 2)。请将这些文件转递给安全理事会主席谢尔盖·拉夫罗夫大使，供提请安理会全体成员注意。

应该指出，所附反应意见主要与个人和法人实体有关。卢旺达、乌干达、南非和津巴布韦也提供了反应意见。专家组将在后半个任务时期内与各国进行对话时，与各国政府讨论这些反应意见。

专家组在 2003 年 3 月再次召开会议之后，与联合国法律事务厅讨论了专家组依照第 1457（2003）号决议第 12 段与各方进行对话以及递送资料应遵循的程序。法律事务厅在为专家组起草的一份说明中确定了这些程序。4 月初以来，专家组在内罗毕和巴黎与许多有兴趣进行对话并提出反应意见供印发的各方举行了面对面的会谈。

在这些会谈期间，专家组强调指出，专家组的目的不是责备或谴责个人、公司或点名的其他各方。其实，专家组通过其报告以及与法人实体和工商界人士对话，力求强调非法开采自然资源与为冲突(例如刚果民主共和国境内持续存在的冲突)推波助澜之间的联系。此外，这种对话的目的是协助改善刚果民主共和国等冲突地区内的商业行为，更为重要的是确保国家和人民从具有透明度的自然资源开采活动中获益。

所附清单(附文 1)中列有(个人)姓名和国籍或(公司)注册国以及专家组报告附件和报告正文中与供印发的所有反应意见有关的参考出处。这份清单实际上是反应意见的索引。此外，专家组根据与有关各方达成最后结果的进展情况，将这些反应意见进行了编排。因此，将反应意见编为三类：

A. 专家组已与这些个人或公司达成共同立场、或认为有可能取得这种结果的各方。这种了解通常涉及承认专家组报告中所提出问题的正确性。

B. 对话均处于初级阶段、因而尚无结论的各方。

C. 卢旺达、乌干达、南非和津巴布韦政府的反应意见。

关于 2002 年 10 月的报告以及前几份报告点名的所有各方，第 1457（2003）号决议第 9 段要求专家组更新其关于这些报告所点名个人和实体的资料。因此，在作进一步对话和调查之后，专家组有可能会修订或更改其目前对某一方的评价。

专家组即将向安全理事会作临时简报，届时将详细解释专家组所制定与已提交反应意见各方接洽的办法以及与争取他们达成解决办法的进展情况。专家组期望与安理会交换意见并获得必要的指导，并希望安理会能够依照第 1457（2003）号决议第 9 段使得各公司和个人从其附件中除名。

联合国刚果民主共和国问题专家组

主席

大使

马哈茂德·卡西姆(签名)

Enclosure 1

List of parties submitting reactions to the report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo of 15 October 2003

Reactions for publication[a]

Group A Resolution of issues completed or ongoing with Panel
Group B No communications or only preliminary discussions with Panel
Group C Government reactions, exchanges with Panel pending

Reaction No.	Name	Group	Country	Annex to main body[b]	Item No. in annex or report paragraph No.
1	Anthony Marinus	A	Belgium	II	44
2	Tenke Mining Corporation	A	Canada	III	76
3	Bayer A.G. + subsidiary H C Starck Gmbh & Co KG	A A	Germany Germany	III III	19 43
4	First Quantum Minerals	A	Canada	III	38
5	Kinross Gold Corporation	A	Canada	III	51
6	American Mineral Fields AMFI	A	Canada	III	9
7	OM Group	A	Finland/ USA	III	63
8	Barclays Bank	A	UK	III	18
9	Standard Chartered Bank	A	UK	III	74
10	Amalgamated Metal Corporation Plc	A	UK	III	8
11	Kumba Resources + associates: ISCOR ZINCOR	 A A	 South Africa South Africa	 III III	 46 85
12	Umicore + subsidiary Sogem	A A	Belgium Belgium	III III	83 72
13	Melkior Resources	A	Canada	III	57
14	Banro Corporation	A	Canada	III	17
15	Ashanti Goldfields	A	Ghana	III	15
16	Anglovaal Mining Ltd	A	South Africa	III	11
17	Carson Products	A	South Africa	III	23
18	Anglo American Plc	A	UK	III	10
19	Afrimex	A	UK	III	2
20	Alex Stewart (Assayers) Ltd	A	UK	III	7
21	Kemet Electronics Corporation	A	USA	III	49
22	A & M Minerals and Metals Plc	A	UK	III	6
23	Fortis + subsidiary Banque Belgolaise	A A	Belgium Belgium	III III	40 21
24	Groupe George Forrest: Enterprise General Malta Forrest Mr. George Forrest George Forrest International Afrique	A A A A	Belgium Belgium, DRC Belgium DRC	I I, III II III	14 10, 34 15 41
25	Tremalt Ltd John Bredenkamp Kababankola Mining Company	A A A	UK, British Virgin Islands Zimbabwe Zimbabwe	I, III II III	25, 80 11 48
26	Oryx Natural Resources Thamer Al-Shanfari	A A	UK / Grand Cayman Oman	I II	18 9
27	Nami Gems	A	Belgium	III	61
28	Abadiam	A	Belgium	body	p. 58
29	De Beers	A	UK	III	29
30	Billy Rautenbach + Ridgepointe Overseas Developments Ltd.	B	Zimbabwe, British Virgin Islands	body	para 32,46
31	Cogecom	B	Belgium	III	25

Reaction No.	Name	Group	Country	Annex to main body[b]	Item No. in annex or report paragraph No.
32	Congo Holding Development Co	B	DRC	I	6
	Felicien Ruchacha Bikumu	B	DRC	II	47
33	KHA International AG	B	Germany	III	50
	+ associate Masingiro Gmbh	B	Germany	III	56
34	Saracen Uganda Ltd	B	South Africa, Uganda	I, III	21, 68
	Heckie Horn	B	South Africa	II	17
35	Avient Air	B	UK/ Zimbabwe	III	16
36	Ahmad Diamond Corp	B	Belgium	I, III	1, 3
	Imad Ahmad	B	Belgium	II	3
37	Asa Diam	B	Belgium	I, III	2, 13
38	Ali Said Ahmad	B	Belgium	II	1
39	Diagem BVBA	B	Belgium	III	30
40	Komal Gems NV	B	Belgium	III	53
41	Jewel Impex Bvba	B	Belgium	III	47
42	Sierra Gem Diamonds	B	Belgium	I, III	22, 70
	Nazem Ahmad	B	Belgium	II	7
	Said Ali Ahmad	B	Belgium	II	4
43	Triple A Diamonds	B	Belgium	I, III	27, 82
	Ahmad Ali Ahmad	B	Belgium	II	2
44	Khalil Nazeem Ibrahim	B	Lebanon	body	p. 112
45	Frédéric Kibassa Maliba	B	DRC	II	27
46	Yumba Monga	B	DRC	II	53
47	Major Gen. James Kazini	B	Uganda	II	25
48	Lt. Gen. Caleb Akandwanaho Salim Saleh	B	Uganda	II	50
49	Col. Burundi Nyamunywanisa	B	Uganda	II	12
50	Col. Peter Kerim	B	Uganda	II	22
51	Jovial Akandwanaho (wife of Salim Saleh)	B	Uganda	body	107
52	Emmerson. D. Mnangagwa	B	Zimbabwe	II	33
53	Gen. Vitalis. M. G. Zvinavashe	B	Zimbabwe	II	54
54	Brig. Gen. Sibusiso Moyo	B	Zimbabwe	II	35

Reactions from Governments

55	Uganda	C
56	Rwanda	C
57	South Africa	C
58	Zimbabwe	C

Notes

[a] Five companies that responded to the Panel stated that their reactions were not for publication.

[b] Annex and main body refers to the report of the Panel of Experts (S/2001/1146, annex).

Enclosure 2

Compiled reactions of parties

Reaction No. 1



Anthony Marinus

Dear Mr. Danino,

Thank you for our meeting in Paris on the 15th of May. It has been an opportunity to clear the issues regarding my nomination in the UN report.

During our meeting you have given me a letter mentioning the reason of my nomination. It regards a shipment for which the origin has been switched and as Logistics Manager of EWRI Kigali it has been deducted that I should have been aware of it.

As explained, in Kigali we were not in contact with the buyers as our exports were always made towards CPH or EWR USA. The shipping documentation was even handled through EWR or CPH. As such I could not have any implication in this since it was handled by EWR USA or CPH and as such beyond my knowledge and control.

When I read about the documentation issue in the UN report I asked for more explanation to both EWR USA and CPH. Both have contested the accusations. You will find herewith attached a written explanation of CPH, on my request, of what happened with that particular shipment. It is in Dutch but I hope you will find someone who can translate it as it shows that I was not aware of this.

This particular shipment is coming partly from EWRI Bujumbura and partly from a sale that has been done directly between EWR USA / CPH and a supplier called Hypolite. The office of Kigali has not even been included in this shipement.

A copy of CPH's answer has also been given to the Great Lakes Commission that I have met in Kigali and in Belgium where I have met Mr. Geens and Mr. Maertens for a second time.

As you can see I have taken all the steps I could to demonstrate that my name does not belong on that list. After having read the UN report I have immediately given my resignation (without any job security) as I did not want, in any case, to be associated with the statements made against EWRI.

I feel relieved to know that my name will be presented by Mr. Ambassador Kassem to the UN Security Council on the 2nd of July in order to be removed of the list. I would be most grateful to have a written confirmation from the UN that my name has been cleared.

Sincerely Yours,
Anthony Marinus

Remarque : message transféré en pièce jointe.

Beste Anthony,

Betreffende het Mozambique verhaal, geef ik je een opsomming van de feiten:

1. Gedurende april 2002 werd EWR/CPH benaderd via Hippolyte voor de levering van 25 ton Tantalite aan de firma AMC, Zuid Afrika.

2. EWR/CPH had op dat moment een partij beschikbaar in Dar-es-Salaam haven. Zoals bekend was het materiaal van origine uit het Grote Meren gebied.

3. EWR/CPH en AMC zijn een prijs overeengekomen en ook de condities van het contract, waarbij geen enkele vraag richting EWR/CPH werd gesteld over de origine van het materiaal.

4. De betalingsconditie in het contract was per L/C (accreditief). Na enige dagen werd CPH door AMC benaderd, dat zij dit materiaal verkocht hadden aan Starck, Thailand en of wij akkoord waren dat Starck direct het accreditief aan CPH zouden openen. Dit was uiteraard geen probleem.

5. Het materiaal werd verscheept en de betaling werd per overeenkomst afgewikkeld.
6. CPH heeft nooit en te nimmer een origine certificaat voor deze partij afgegeven.
7. Gedurende september werd ik benaderd door Starck, Duitsland, waarbij werd gevraagd naar de origine van het materiaal geleverd aan Starck, Thailand. Wij hebben duidelijk aangegeven dat het materiaal aangekocht was in Rwanda/Kongo.

8. In het rapport wordt genoemd dat er voor deze zending een certificaat van origine met als oorsprongsland Mozambique zou bestaan. Indien dit het geval is, is dit a) niet door CPH uitgegeven en b) onjuiste en vervalste informatie. CPH staat hier echt totaal buiten.

9. Met Starck, Duitsland, heeft recentelijk een gesprek plaatsgevonden waarin ook zij duidelijk bevestigen dat CPH geen vals origine certificaat heeft verstrekt en dat dit ook nooit door hen beweerd is. Zij hebben echter materiaal aangekocht van AMC van wie zij een origine certificaat uit Mozambique hebben ontvangen.

Ik hoop dat bovenstaande enig inzicht geeft in deze transactie.

Met vriendelijke groeten,

Doron

PS Nogmaals van harte gefeliciteerd met de toekomstige uitbreiding – hoopt dat Isabelle zich goed voelt !!

BV CHEMIE PHARMACIE HOLLAND

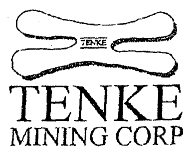
DORON B. SANDERS

FRIEDMAN BUILDING

HOGEHILWEG 4

1101 CC AMSTERDAM

Reaction No. 2



May 21, 2003

Chairman of the UN Panel on the DRC

UNITED NATIONS – Expert Panel on the Illegal Exploitation of Natural Resources

EXPNATDRC/UNON
P.O. Box 30302 00100
Nairobi, Kenya
Phone 254 2 622 490
Fax 254 2 622 689

Re: Tenke Mining Corp and DRC Activities Related to OECD Guidelines

Dear Mr. Chairman

The United Nations Expert Panel on the Illegal Exploitation of Natural Resources and other Forms of Wealth in the Democratic Republic of the Congo included Tenke Mining Corp ("TMC") in Annex III of the UN Panel report of 16 October 2002, along with many other companies who allegedly were in contravention of OECD guidelines with their business activities in the DRC.

On 21 April 2003 in a meeting at UN offices in Nairobi, Kenya, the Panel disclosed to the representative of TMC their reasons for including Tenke on that list. The Panel presented concerns that Tenke Mining Corporation/Lundin Group was granted exemptions from paying taxes to the central government of the DRC for a period of 10 years, and additionally that Tenke Mining Corporation/Lundin Group obtained tax advantages for each mine they operated in the DRC. The Panel also noted an allegation that Tenke Mining Corporation/Lundin Group paid 50 million USD directly to President Laurent Kabila.

Tenke Mining Corp stress that we have not been in contravention of OECD guidelines regarding our activities in the DRC, including the granting of the certain tax exemptions which were agreed within the Tenke Fungurume projects' Mining Convention. Furthermore there is a misinterpretation which is clarified below in regards to the "tax advantages for each mine" issue, and the 50 million USD transfer payment that we were obligated to make was made directly to Gecamines, the State mining company, in complete accordance with our TFM Mining Convention and Formation Agreement.

Regarding company semantics, the "Lundin Group" does not exist as a formal entity. Tenke Mining Corp is a Canadian public company, which holds its ownership interest in the Tenke Fungurume deposit through its wholly owned subsidiary – Lundin Holdings Limited, who in turn owns 55 % of Tenke Fungurume Mining S.A.R.L. ("TFM") – the Congolese company which holds 100 % of the deposit rights. Gecamines holds the remaining 45 % of TFM.

We acknowledge that TMC (through Lundin Holdings and TFM) were in receipt of limited tax exemptions and certain tax advantages, but these were not in contravention of OECD guidelines as such terms were in conformance with DRC laws and investment codes in place at the time, and balanced by staged cash transfer payments to Gecamines which were the stipulated consideration

for the value of the mining concessions, and value of past technical work and constructed assets at the site.

Tax holidays and other tax advantages for mining projects are common place world wide, as mining projects are very capital intensive; tax relief is often provided to enable the repayment of project debt, and thereafter tax advantages normally endure to encourage mine expansion. Applicable DRC regulations at the time allowed for the tax regimes in the TFM Mining Convention including articles 39 and 42 of the then current Mining Law, Ordonnance-Loi no. 81-103 of 2 April 1981, and Ordonnance-Loi 86-028 of 5 April 1986 of the DRC Investment Code.

These tax advantages and exemptions are granted exclusively as they relate to the project defined by the Mining Convention, i.e. the mining concessions of Tenke Fungurume. Therefore there is some confusion in the second part of the Panel's concerns regarding tax advantages for "each mine" Tenke Mining Corp operates in the DRC. As the Tenke Fungurume concession area is made up of a number of mineral outcroppings, each of which might be developed by separate open pits with staged capital investments, the term "each mine" was adopted in our agreements to help interpretation of the overall tax advantages in the TFM Mining Convention – but these tax terms are categorically only for mining investment within the boundaries of the Tenke Fungurume concession, and not in any way applicable to any investment elsewhere in the DRC.

Contrary to the allegation of who the first transfer payment was made to, Tenke Mining Corp. did not pay $US 50 million, nor any other sum directly to President Laurent Kabila. Lundin Holdings were obligated to pay staged transfer payments to Gecamines, which were all transparently negotiated in competitive international tender, and TMC reported such obligations publicly in press releases at the time (November 1996). We met our obligation for the first of these transfer payments ($50 million) by paying this amount directly to Gecamines, and the satisfaction of this payment obligation was noted publicly by TMC in a formal press release at the time (May 1997).

All of TMC's rights and detailed obligations surrounding the development of the Tenke Fungurume deposit have been a matter of public record since inception. At all times we have conducted our activities in the DRC in a transparent and responsible manner, protecting the integrity of the development plan for a world class mineral asset which is important both to our shareholders, and to the people of the DRC.

We are a strong supporter of the Panel's mandate, and we share the concerns on the many serious issues raised in the main body of the Panel's report. Without a resolution to these concerns, it will be very difficult for responsible mining companies to develop the DRC's mineral resources in a manner with provides long term benefits for investors, the DRC State and its people. Tenke Mining Corp has invested in the range of $US 90 million in trying to advance our project since 1996, and we have been dramatically affected by the DRC conflict which began in August of 1998. Therefore we remain at great risk if the main concerns expressed in the Panel's reports are not resolved as part of the other key initiatives to achieving a durable peace in the country.

As noted in our discussions with the Panel, to mitigate the effects of the war on our project, since late 1998 we have been attempting to obtain modifications of our underlying commitments whereby the remaining transfer payments and existing TFM tax exemptions are replaced by a system of long term royalties and regular corporate income tax. We have made some progress in these discussions with the DRC State and Gecamines, and we have been actively supporting the World Bank's

initiative to successfully implement a new Mining Code which could facilitate changes to TFM's existing conditions to accomplish such modifications.

Tenke Mining Corp. has conducted itself as a good corporate citizen in the DRC. We annually pay those taxes which are contained within our Mining Convention, the Tenke Fungurume project has been initiated according to high international standards and we have been in complete conformance with laws and our contractual obligations within the DRC. Despite the protracted war, we have kept close to 50 staff on the payroll to protect the site assets, we fund local education, maintain the only doctor and nurses in the area, we support water supply to the local population and fund local maize production, and we contribute regularly to WHO area vaccination programs.

Tenke Mining Corp remains committed to the responsible development of our mineral assets in the DRC in a manner which mutually benefits the company's shareholders and the DRC as a whole. We have maintained regular contact over the last several years with the World Bank, Canada's Ambassador to the DRC and our Department of Foreign Affairs in Ottawa such that they are periodically apprised of our activities and challenges. As suggested by the Panel in our recent meetings, we have initiated communication with the Government of Canada's OECD representative, and we commit to continue regular communications with all of those different authorities such that our efforts in the DRC are appropriately aligned.

We hope that the above illustrates that Tenke Mining Corp have and will continue to be a responsible investor in development of the DRC's important mineral resource sector.

Reaction No. 3



STÄNDIGE VERTRETUNG DEUTSCHLANDS
BEI DEN VEREINTEN NATIONEN
PERMANENT MISSION OF GERMANY
TO THE UNITED NATIONS

871 UNITED NATIONS PLAZA
(1ST AVE., BTW. 48TH AND 49TH ST.)
NEW YORK, N. Y. 10017
TEL: (212) 940-0400 (operator)
(212) 940-0428 (direct)
FAX: (212) 940-0403

Note N° 218

The Permanent Mission of Germany to the United Nations presents its compliments to the United Nations Expert Panel on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo and with reference to Security Council Resolution 1457 (2003) of 24 January 2003 as well as the Panel's Note Verbale of 18 March 2003 has the honour to forward copy of statements from the Bayer Company as well as its subsidiary the H.C. Starck company in answer to the allegations made against them in your report to the United Nations Security Council on 24 October 2002.

The Permanent Mission of Germany to the United Nations avails itself of this opportunity to renew to the United Nations Expert Panel on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo the assurances of its highest consideration.

New York, 29.May 2003



H.C. Starck

Statement on the Final Report of the Panel of Experts on the illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of Congo according to Resolution 1457 (2003)

Employees of H.C. Starck met with the panel in Nairobi on 25 April to discuss the differences of opinion with regard to some of the points in the panel's report of 16 October 2002 (S2002/1146), and to inspect and take delivery of various documents which substantiate the accuracy of the said report. Pursuant to UN resolution 1457, H.C. Starck will submit a statement following the meeting. H.C. Starck herewith complies with that obligation.

The panel asked H.C. Starck to address three points in particular in its statement:

- What steps have been taken as a result of the accusations
  H.C. Starck currently does not purchase any raw materials from Central Africa. Should this become necessary in the future, H.C. Starck will contact the panel in advance to obtain its opinion and consent. The panel agreed to this procedure. An effective verification system is planned for the time "after the panel".

- Compliance with OECD Guidelines
  Shortly after its discussion with the panel, H.C. Starck had a meeting with representatives of the Department of Foreign Affairs as "National Focal Point" (contacts to the panel) as well as representatives of the Ministry of Economics and Labor as the national contact office for the OECD guidelines. As a result of that meeting, it can be stated that non-compliance with OECD guidelines by a German company can only be ascertained by the competent national contact office for OECD guidelines or by the Committee for International Investment and Multinational Enterprises (OECD-CIME). Since there are no such specific findings with regard to non-compliance of OECD guidelines, there are currently no proceedings pending with the compentent German national contact office for OECD guidelines.

- H.C. Starck will continue to cooperate with the panel in future.
  We confirm that we are happy to comply with this request by the panel.

The following items were also discussed in detail:

1. **The statement made by employees of Eagle Wings that up to 15 % of Eagle Wings production is sold to H.C. Starck:**

As evidence for that allegation, the panel submitted a document which it had drawn up after a telephone call with Eagle Wings dated March 2002.

H.C. Starck issued the following statement in that respect: "As far as we know, the statement made by Eagle Wings is incorrect. At no time has H.C. Starck had direct contact with Eagle Wings. The panel can check this claim at any time by inspecting our order documents – as we have already offered on several occasions.

2. The statement contained in the report that the panel has documents which prove that H.C. Starck continued to purchase coltan in Central Africa after August 2002:

As evidence for this allegation, the panel submitted documents which H.C. Starck had itself given the panel voluntarily and of its own accord in mid-2002. This refers to a contract with the South African company AMC. On the basis of these documents, the panel conducted several phone calls which, in the panel's opinion, permit the conclusion that the material was supplied from Central Africa and not from Mozambique, as our contract partner maintained.

Following intense discussions, H.C. Starck and the panel consequently agreed that H.C. Starck had obviously been misled with regard to the origin of the material. The panel will no longer maintain its allegation that H.C. Starck is guilty of intent.

3. The statement in the report that H.C. Starck had failed to comply with the OECD guidelines for multinational enterprises:

H.C. Starck received no documents or other evidence in support of that statement. However, the panel asked H.C. Starck to maintain close contact with the competent German contact office with regard to the OECD guidelines.

H.C. Starck emphasized that that contact had already been established a short time ago and would be continued in the future (see above).

Goslar, 27.05.2003

Bayer

May 25-2003

To the Secretary General
of the United Nations
UN Headquarters
First Avenue at 46th Street
New York, NY 10017

Dear Sirs,

In its Resolution 1457 of January 24, 2003 the U.N. Security Council invites individuals, companies and states named in the Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth in the Democratic Republic of Congo – which the U.N. Secretary General transmitted to the Security Council on October 15, 2002 – to submit their comments on the Report by March 31, 2003. This deadline has since been extended to May 31, 2003.

Bayer AG, Germany, is listed in Annex III to the Report as a company which, in the Panels's view, violates the OECD guidelines for Multinational Enterprises.

Bayer strongly rejects this allegation, which is based on false conclusions drawn following an investigation by the Panel into raw material sourcing by our subsidiary H.C.Starck of Goslar, Germany.

A copy of H.C. Starck's statement on this matter is attached for your convenience.

Sincerely,
signed Dr. Thomas Portz
Head of Public Policy

Copy to Expert Panel on DRC, Nairobi

Reaction No. 4



Ambassador Mahmoud Kassem
Chairman
UN Panel of Experts on the DRC
United Nations
Gigiri
Nairobi
Kenya

12 June, 2003

Your Excellency

STATEMENT FROM FIRST QUANTUM MINERALS LTD TO THE PANEL OF EXPERTS ON THE ILLEGAL EXPLOITATION OF NATURAL RESOURCES AND OTHER FORMS OF WEALTH OF THE DEMOCRATIC REPUBLIC OF CONGO

First Quantum Minerals Ltd ("the Company") is pleased to offer further comment on its inclusion in the Final Report of the Panel of Experts on the Illegal exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of Congo ("the Report") in the light of detailed discussions with members of the Panel of Experts.

Although it disagrees with allegations included in the last report, the Company has reviewed the evidence presented by the Panel of Experts and now understands more fully the background to the statements relating to the Company in the Report. In a substantive dialogue with the Panel of Experts, the Company has demonstrated that the evidence is based on actions by independent consultants ("the Consultants") appointed by the Company to assist in political lobbying in the DRC in late 1997, acting in breach of their contractual obligations and without the authority of the Company. The Company has also demonstrated to the Panel of Experts that once the problem was recognised, it was dealt with immediately and the relationship with the consultants severed in mid 1998.

No payment to Government officials, either in the form of cash or public company shares was ever made or promised by the Company.

Since the events referred to in the Report, the Company has maintained an exemplary record of doing business in the DRC and has successfully discovered and developed the new Lonshi mine which is currently the country's largest copper producer.

The Company acknowledges and supports the UN's goals of creating an open and honest business environment in the DRC and is therefore happy to cooperate with the Panel of Experts to achieve these goals. Furthermore, the Company will ensure its compliance at all times with OECD Guidelines through the formal liaison procedure with the OECD National Contact Point in Canada.

Yours sincerely,

G. Clive Newall
President

Reaction No. 5



Robert M. Buchan
President &
Chief Executive Officer

June 13th, 2003

Kinross Gold Corporation has provided the Expert Panel with information and clarification concerning its initiatives and conduct in the Democratic Republic of the Congo. Based on this, its ongoing co-operation with the Panel and it consistent adherence to the OECD guidelines, Kinross Gold Corporation is confident that it will no longer appear on annex III.

Robert M. Buchan
President & CEO

Reaction No. 6

AMERICA
MINERAL
FIELDS INC.

9th June 2003

United Nations Expert Panel on the Illegal Exploitation
of Natural Resources and Other Forms of Wealth in the
Democratic Republic of the Congo
EXPNATDRC/UNON,
PO Box 30302
00100/Nairobi, Kenya
fax +254 2622 689

For the attention of Mr. Mel Holt

Dear Sir

Panel Report - America Mineral Fields Inc

America Mineral Fields Inc ("AMF") was pleased to be given the opportunity to meet representatives of the Panel in Paris on 15th May 2003. At that meeting, the Panel identified those matters which had led to AMF's unfortunate inclusion in Annex III to the draft Report the Panel had prepared on the illegal exploitation of natural resources in the DRC.

On 30th May, 2003 AMF wrote to the Panel to confirm the various representations of fact which AMF had made to the Panel's representatives at the 15th May meeting. These representations *inter alia*:

1. detailed the history of the various agreements relating to the Kolwezi project and clarified the reasons for the various changes in payments that were due to be made to Gécamines,

2. identified the transactions that were the probable origins of the numbers referred to in the matters that had been queried, and detailed the legitimate, commercial and open nature of these transactions,

3. rebutted all allegations of inappropriate conduct (allegations which the Panel's representatives confirmed had been made on the basis of statements made to the Panel by various individuals, unsupported by any documentation or other written evidence) and,

4. detailed the considerable, and on-going, harm caused to AMF through its regrettable inclusion in Annex III of the draft Report.

AMERICA
MINERAL
FIELDS INC.

At the meeting, summaries of the original Kolwezi agreement and the subsequently agreed amendments were given to the Panel. These were supplemented in detail in the subsequent letter of 30th May to the Panel and in the Company's earlier letter of 19th March 2003 that had provided an analysis of AMF's full and on-going compliance with OECD guidelines.

The terms upon which AMF has negotiated for the Kolwezi Project have always been freely available through AMF's Annual Reports, its public filings with the Securities and Exchange Commission (on Form 20F), and in press announcements released at relevant times in accordance with our stock exchange, legal and regulatory obligations. As a Canadian company quoted on the Toronto Stock Exchange, with headquarters in the United Kingdom, and reporting also to the United States SEC due to the number of our American shareholders, these obligations are extensive, and indeed require all material terms of transactions and payments to be fully disclosed.

AMF was pleased to learn that the Panel was fully satisfied by AMF's response, and that the Panel proposed to recommend to the Security Council that AMF should not be included in Annex III of the final Report.

The Board and Management of AMF support fully the work of the Panel in relation to the DRC. Our intention is, and always has been, to do business in the DRC on a transparent basis and in accordance with best international standards and guidelines including those laid down by the OECD.

Yours sincerely

T P Read
President and Chief Executive Officer

Reaction No. 7



Mr. Mahmoud Kassem
Panel of Experts on Illegal Exploitation
Of Natural Resources and Other Forms of
Wealth of the Democratic Republic of Congo
Africa Division
P.O. Box 30302
00100 Nairobi GPO
Kenya

6th June 2003

Dear Mr. Kassem,

Referring (i) to the letter submitted by OM Group, Inc. ("OMG") to the DRC Panel of Experts on 28th May 2003, (ii) to the discussions with the members of DRC Panel of Experts in Nairobi on 29th April 2003 and further good constructive collaboration between OMG and the DRC Panel of Experts and (iii) to the recent requests expressed over telephone by the experts of DRC Panel of Experts, Mr. Danino and Mr. Davidsson, we would like to respectfully state further the following:

1. OMG's overall compliance with OECD guidelines

- In our letter of 28th May 2003 we have underlined that the Big Hill project is the biggest foreign investment in DRC during the last three-four decades. It has been OMG's starting point from the beginning of the negotiations in DRC to have a strong local partner involved in the planned project and that this local partner (in this case Gecamines) will make its contributions into the project not by investing money but bringing in their local knowledge, their contacts in DRC and their ability to act as an interface in DRC vis á vis government, authorities, local suppliers of services and goods etc.

- It is OMG's company policy that OMG and its' group companies do not have any direct contacts with the government or authorities in DRC but that all such contacts should be handled by companies having the necessary local contacts and capabilities. In this project it has been agreed in the Joint Venture Agreement that Gecamines, being the competent local company, has been responsible to obtain all necessary permissions and approvals required for the Big Hill project in DRC.

- It is also OMG's company policy to ensure that the technology matters, the specifications of environmental policy as well as issues related to social and employment matters in any of our Joint Venture projects are organised in a similar general manner as OMG and its'

subsidiary OMG Kokkola Chemicals Oy ("OMG/KCO") have been used to do in Europe, especially in Finland. With due regard to local circumstances, it is thus a strict policy of OM Group, Inc., as a listed company, to comply with the required ethical standards and the transparency as well as with different ethical rules such as, for instance, the mentioned OECD guidelines.

- The joint venture project in question has so far been successful and fulfilled the expectations in DRC even if the extremely low cobalt price has caused problems for the main shareholders of GTL, especially OMG having been the principal financier of the project. It has also meant that the time period during which Gecamines can have its shares subscribed has become longer than anticipated. Also the slag sales have generated so far less cash than expected. But as soon as the world cobalt price rises to the more normal level, then also the shareholders of GTL will enjoy the full benefits of the project.

- As a summary, we van confirm that OMG and all OMG's subsidiaries have throughout the joint venture project in DRC, followed good ethical rules and standards as well as respected and followed the OECD guidelines for multinational companies.

2. Compliance of the OECD guidelines in regard germanium

- The DRC Panel of Experts has made an allegation that, even if the joint venture project in question as such is to benefit DRC and Gecamines, the handling of germanium issue has not been in compliance with the OECD guidelines. In our letter of 28th May 2003 we explained in detail, how the germanium issue has been handled and what is the situation between Gecamines and OMG Kokkola Chemicals Oy with respect to germanium. The following is a summary of the current situation:

  - The negotiations are under way, but not between Gecamines and GTL (who are parties to the Long Term Slag Sales Agreement) nor between the shareholders of GTL (e.g. OMG Kokkola Chemicals Holding B.V., a company located in Netherlands) but between Gecamines and OMG/KCO, a Finnish company, which purchases the cobalt alloy from GTL.
  - GTL does not make any use of germanium and it has never contemplated it. It only buys cobalt slag from Gecamines, arranges its' treatment at the smelter in Lubumbashi and sells the cobalt alloy to OMG/KCO. There is accordingly no legal reasoning in requiring any amendment to the Joint Venture Agreement.
  - Germanium as such is a matter of a totally NEW commercial contract that is intended to be concluded between parties that have no contractual relationship between themselves in the joint venture project.
  - OMG/KCO has offered to pay a royalty of 5 % - 10 % re. germanium to Gecamines.
  - Gecamines has requested a profit sharing (not a royalty) corresponding to some 15 % - 20 % from the sale profits of germanium.
  - However, there cannot be any profit sharing as long as there is no profit made and normally any participation in the profit sharing would require some investment. Gecamines has not invested anything regarding germanium and the germanium production has only made losses so far.
  - Therefore the only correct way to pay compensation for the germanium is in a form of royalty.
  - To understand the total volume of germanium involved we summarise as follows:

- Germanium located in the Big Hill as a small side issue, representing only a fraction of the revenues to be generated from cobalt and copper.
- Production of germanium in Finland has made loss both in 2002 and in 2003. Only when the production reaches full capacity (10 tons annually), the capital and operating expenses fall. But then the high euro-value may deteriorate the result. We can safely assume that it will take a number of years before the germanium production can yield positive results.
- In spite of the losses, OMG is committed to offer fair royalty to Gecamines. It should be emphasized that profit sharing, as proposed by Gecamines, would mean for Gecamines a wait of additional years before any compensation would accrue. Royalties, however, are payable immediately and retroactively.

3. Commitment of OMG vis á vis germanium

Germanium is a commercial matter that shall be agreed in a normal level. While OMG and OMG/KCO consider they have no contractual obligation to pay for the germanium contained in the Big Hill slag , they recognise the fundamental right of the Congolese people to share the profits of any minerals originating from the DRC and the concerns of the DRC Panel of Experts in that respect. OMG and OMG/KCO stress that they have offered a fair and reasonable agreement for royalties for the germanium OMG/KCO extracts and they are currently engaged in negotiations with Gecamines to finalise such agreement.

In this letter OMG/KCO commits to retroactively apply a royalty payment to Gecamines that will at the very least correspond to any benchmark level applied in the equivalent grades and quality of germanium. This is and it has been a firm commitment of OMG/KCO already since autumn 2000 and it is dedicated to conclude the deal in favour of Gecamines as soon as possible. Furthermore, this binding commitment will be used retroactively from the date of commencing of the germanium production.

4. Removal from the Annex of the Final Report of 8th October 2002

Finally and having perused all other clauses of OECD guidelines referred to above, we can confirm that the overall compliance policy described above as well as the specific agreements and measures that have been taken in connection with the Big Hill project, guarantee a full compliance with the OECD guidelines. Also the Finnish national contact point (Department of Trade and Industry, "DTI") has in their opinion presented the view that the germanium is a minor issue and is in its nature a commercial issue to be agreed between the relevant parties. OECD guidelines do not and cannot intervene in normal commercial issues. Therefore OMG and OMG/KCO should be deleted form the list in any of the Annexes of the Final Report of 8th October 2002.

In line with the recommendations of the Finnish DTI and based on the binding commitments and more general descriptions set out in this letter, OM Group, Inc and OMG/KCO should be removed from the list (Annex III) of the Final Report of 8th October 2002. In addition, any mentioning of the germanium issue as being a real or potential issue of conflict between Gecamines and OMG/KCO and as such being likely to violate OECD guidelines, should be removed from the Final report.

Thank you for your understanding and the constructive co-operation with the DRC Panel of Experts.

Yours sincerely,

OM Group, Inc. // OMG Kokkola Chemicals Oy

Antti Aaltonen

Reaction No. 8

Barclays Africa
1st Floor
Murray House
1 Royal Mint Court
London
EC3N 4HH

www.barclays.com

BARCLAYS

13 June 2003

Dear Ambassador Kassem,

BARCLAYS PLC

Further to our meeting, and subsequent correspondence, I outline Barclay's response to the Expert Panel on the Democratic Republic of Congo as follows:

Barclays seeks to maintain the highest standards of business conduct throughout our operations around the world, and would not wish to contravene OECD Guidelines for Multinational Enterprises or any other regulations of international bodies. We acknowledge the issue raised with us by the UN Expert Panel on the Democratic Republic of Congo as the reason for our being listed in Appendix III of their report, and are grateful to them for drawing this to our attention. Following an internal review which identified the same issue, we took immediate and appropriate action to address the situation. We welcome the fruitful and constructive dialogue with the UN which has taken place since publication of the initial report, and which we hope will result in our being delisted from the revised report. We also look forward to building on our current working relationship with the UN and developing it further in the future so that we may be able to address proactively issues of mutual concern and interest.

Yours sincerely

Andy Bainbridge
Business Risk Director
Barclays Africa

Reaction No. 9





Monday 16 June 2003

STATEMENT TO THE UN EXPERT PANEL

Standard Chartered Bank shares the UN's concerns regarding the Democratic Republic of Congo. Standard Chartered has shown to the UN Expert Panel's satisfaction that it had already reported to the authorities its suspicions regarding a customer named in the report and had already taken steps to terminate the relationship with that customer which led to the bank being included in an appendix to the report. As a result, the UN Expert Panel is recommending that Standard Chartered's name be removed from the appendix.

Standard Chartered is committed to being a force for good in the countries in which it does business. The terms of the following standards are reflected in the Group's policies governing how and with whom the Group does business. Standard Chartered supports:

* The Universal Declaration of Human Rights (approved by the Board in September 2001)
* The UN Global Compact since (April 2001)
* The OECD Guidelines for Multinational Enterprises (since October 2001)

Full details of the Group's Corporate Social Responsibility policies and practices are available in the 'About Us' section of the Group's website, which can be found at www.standardchartered.com.

Standard Chartered Bank
Group Corporate Affairs
1 Aldermanbury Square
London EC2V 7SB
www.standardchartered.com

Note

Standard Chartered is the world's leading emerging markets bank. It employs 29,000 people in over 500 offices in more than 50 countries in the Asia Pacific Region, South Asia, the Middle East, Africa, United Kingdom and the Americas.

The Bank serves both Consumer and Wholesale banking customers. Consumer Banking provides credit cards, personal loans, mortgages, deposit taking and wealth management services to individuals and small/medium sized businesses. The Wholesale Bank provides services to multinational, regional and domestic corporate and institutional clients in trade finance, cash management, custody, lending, foreign exchange, interest rate management and debt capital markets.

With 150 years in the emerging markets the Bank has unmatched knowledge and understanding of its customers in its markets.

Standard Chartered recognises its responsibilities to its staff and to the communities in which it operates.

Alex Blake-Milton
Group Head of Government Relations

Reaction No. 10



AMALGAMATED METAL CORPORATION PLC

55 Bishopsgate, London EC2N 3AH

Email: mailoesk@amcgroup.com

To:	**Alex Rose Esq.,**		
City:	**Nairobi, Kenya**	**Fax**	**00 254 2 62 26 89**
From:	**G C L Rowan**	**Fax:**	**020 7623 6015**
Our Ref:	**GCLR/MD**	**Date:**	**12th June 2003**

Dear Mr Rose,

I attach a statement as discussed,

Yours sincerely,

G C L Rowan
Director

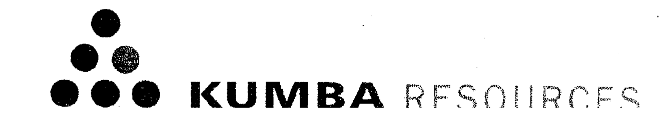
STATEMENT BY AMALGAMATED METAL CORPORATION PLC ("AMC")

Following the issue of the Report of the Panel of Experts on the illegal exploitation of the natural resources of the Democratic Republic of Congo, AMC was pleased to accept the invitation of the Panel to respond in writing and then, at the earliest opportunity to meet with the Panel.

In summary AMC confirmed that, during the period of the civil war and civil disturbance, the company continued normal commercial relations with its sole local supplier from whom it had regularly purchased significant quantities over a period of over 12 years, and in whose own probity there was justifiable confidence. At no time did AMC deal directly or indirectly with members of the armed forces or the criminal "elite network". AMC considers that at all times it acted in a manner that was ethical, in accordance with OECD Guidelines and in conformity with its own high standards of corporate behaviour.

AMC is pleased to have been given the opportunity to respond to the Report and trusts that, in co-operating fully with the Panel, it has made a useful contribution to the Panel's important work. AMC confirms that it will continue to provide assistance to the Panel as required.

Reaction No. 11



Kumba Resources Limited Reg No 2000/011076/06
Roger Dyason Road Pretoria West 0183
P O Box 9229 Pretoria 0001 South Africa

Website www.kumbaresources.com

21 May 2003

Ambassador Mahmoud Kassem
Chairman of the UN Expert Panel on the DRC
EXPNATDRC, UNON
Office CW-207, Extention 2493
C/o UPS, UNEP Complex Gigiri
Limuru Road
Nairobi
KENYA

Your Excellency Mr Ambassador

ALLEGED ILLEGAL EXPLOITATION OF RESOURCES OF THE DEMOCRATIC REPUBLIC OF CONGO (DRC)

Following on our discussion on 8 May 2003 with Messrs Ismaila Seck (Expert) and Paul A Davidsson (Political Affairs Officer) and your letter dated 8 May, which we received from Mr Seck, regarding the allegation that Iscor (Iscor Mining) and Zincor, now Kumba Resources, contravened the OECD guidelines, we wish to respond as follows:

1. Paragraph 1 of your letter, dated 8 May 2003, refers to Tenke Mining Corporation. The two persons attending the meeting, Messrs DJC Taylor and JD Fourie did not represent Tenke Mining Corporation. They represent Iscor Limited, Kumba Resources Limited (Kumba) and Zinc Corporation of South Africa Limited (Zincor).

2. We have taken note of the second paragraph of your letter dated 8 May 2003 and wish to respond to that paragraph as follows:

2.1 When American Mineral Fields (AMF) approached Zincor, for the redevelopment of the Kipushi Mine in the DRC, Kumba, together with Zincor conducted a comprehensive due diligence investigation. No information indicating any illegal exploitation of the natural sources and other forms of wealth in the DRC by AMF was found. As explained, Zincor was approached because it operates a zinc smelter in South Africa.

2.2 The IFC (part of the World Bank group) as well as the South African Government agency, the Industrial Development Corporation of South Africa (IDC), have recently entered into an agreement with AMF regarding the Kolwezi Tails project in the DRC. We doubt it that these organisations would be willing to enter into an agreement with AMF regarding any project, if they were not satisfied with the *bona fides* of AMF as a company. (If we are listed because we have a contract with AMF, these organisations should also be listed.)

2.3 After completion of Kumba's due diligence investigation regarding the Kipushi project, we established that there was at that time no legally enforceable agreement between Gecamines and AMF. Even if AMF had the relationship set out in your letter, it did not assist them in getting an agreement with Gecamines, regarding the Kipushi project.

2.4 We provided AMF with a copy of your letter dated 8 May 2003. We requested them to address the issue raised therein that negatively impacted on Kumba. We trust that AMF has set the record straight on the facts implicating them in the letter handed to us. If not, will you please let us know what we can do to set the record straight that through our agreement with AMF we are not contravening the OECD guidelines.

2.5 Having received a copy of the letter handed to AMF by the UN Panel, we note that the focus of the allegations against AMF/AAC are linked to the Kolwezi Tails project and that the allegation set out in our letter is not repeated in the letter to AMF. We find it difficult to understand. Could you perhaps explain this to us?

2.6 It was a condition precedent of the joint venture agreement with AMF that a legally binding Heads of Agreement (HOA) should be concluded with Gecamines and DRC Government approval obtained, before the joint venture agreement between Kumba and AMF became enforceable (Annexure 1 refers).

2.7 Kumba and AMF have forwarded a draft HOA to Gecamines regarding the development of the Kipushi Zinc Mine in the DRC (Annexure 2 refers). Gecamines has not as yet responded and we are convinced that a fairly extensive process of negotiations will follow regarding our draft and Gecamines response thereto. You will notice from this draft that this is a *bona fide* commercial transaction being conducted on an arms-length basis with Gecamines.

3. In the last paragraph of your letter dated 8 May 2003 you indicate that the panel has learned that Iscor Limited has been granted the project to rehabilitate the Kamoto underground mine site. We wish to respond as follows to this paragraph:

3.1 As indicated in our prior correspondence to Mr Kassem, all the rights and obligations of Iscor Limited have been taken over by Kumba Resources Limited.

3.2 With great respect, the fact that a project has been granted to a company cannot in itself be regarded as illegal exploitation of the natural resources and other forms of wealth of the DRC.

3.3 During the discussion with the committee on 8 May 2003, Mr Seck indicated that the Kamoto project is mentioned because of Kumba's agreement with Anglo American Corporation (AAC) regarding the Kamoto project. We are concerned that this allegation is not contained in the letter. For this reason we have

recorded our concern on the copy that was handed back to Mr Davidsson. We place on record that there never was, or now is, an agreement with AAC in respect of Kamoto.

3.4 In the discussion with Messrs Seck and Davidsson, we informed them that Iscor Mining (now Kumba Resources) was part of a consortium imposed on consortium members by Mr Mpoyo, the then DRC Minister of Mines and Petroleum, for the large Group West Complex. The consortium members included the Chinese, the Angolans, AAC, Billiton and Iscor amongst others. The Letter of Intent (LOI) regarding this project has since lapsed. Iscor Mining (Kumba) concluded the agreement regarding Kamoto prior to signing the LOI for the Group West project.

3.5 We have fully explained the agreement between Iscor (now Kumba) and Gecamines, regarding the Kamoto project, to the members of the committee.

- The agreement is an arms-length transaction in terms of which Kumba (with the assistance of Gecamines) will obtain the financing for the project.

- Kumba will manage the mine/and concentrator, on behalf of Gecamines and Gecamines will manage the Luilu Refinery.

- It is not a joint venture transaction, but a management agreement.

- The finance will be recovered from 70% of the free cash flow from the operation and Kumba will only receive 30% of the profit with Gecamines receiving 70%.

- We have also indicated that this is a relatively short-term (ten year) agreement.

- Due to the *force majeure* situation that arose in the DRC, Kumba could not commence with this project. We sent a letter to Gecamines in which we

clearly stated the terms and conditions that Kumba was prepared to proceed with the Kamoto project. This was discussed with the DRC Minister of Mines and the Chairman and CEO of Gecamines during February 2003.

- We have also informed you that we are aware that Gecamines are negotiating with other parties to exclude Kumba from any involvement in the Kamoto project.

- We stated that the necessary legal processes were followed in concluding the agreement regarding the Kamoto project, namely:

  a) We entered into a Heads of Agreement with Gecamines, which was approved by the Council of Ministers of Zaire (now the DRC).

  b) We then negotiated a definitive agreement (DA) with Gecamines.

  c) We were required then to negotiate the agreement with a large contingent (30 plus) of DRC Government experts.

  d) A Presidential Decree was then issued for Kumba's involvement in the project.

3.4 As requested, we hereby include a copy of the initialled Kamoto DA (Annexure 3 refers).

4. We again wish to reiterate that the companies within the Kumba Group involved in the Congo set for themselves the highest possible governance/business ethical standards and will not involve ourselves in any illegal activities. Kumba's commitment to sound governance, business ethic and social/environmental responsibility is manifested in our annual report (Annexure 4 refers), and are demonstrated in our business dealings and our operations.

5. As the person responsible for the implementation of Kumba's policies in Africa, and having been responsible/accountable for negotiating all the agreements regarding Kumba's involvement in the DRC, I have given you my personal assurance that I have made every endeavour to operate within the laws of the country in which we are engaged and have ensured the highest ethical standards.

   A video recording of a presentation I made to a large contingent of mining companies and DRC Government representatives, including the Minister of Mines, and the then CEO of Gecamines, Mr Mbaka, was handed to Messrs Seck and Davidsson. You will note that I addressed the dangers of bribery and corruption (and the enrichment of the "elite") in my presentation.

   Kumba's detailed response to the allegations of Iscor and Zincor having been implicated in contravening OECD guidelines in the UN Panel's report on the plundering of the resources of the DRC was forwarded to you and also handed to Messrs Seck and Davidsson during our discussion.

6. We have put together a file of relevant information as discussed, which includes:

   Annexure 1 - Key abstracts from the JV agreement between Zincor and AMF regarding the Kipushi project.

   Annexure 2 - The draft HOA between AMF, Zincor and Gecamines regarding Kipushi.

Annexure 3 - The DA with Gecamines regarding Kamoto.

Annexure 4 - Kumba Resources Annual Report.

Annexure 5 – The letter sent to the President of the Security Council of the UN, dated 6 November 2002, a copy of which was forwarded to you.

We have submitted the above documents with the understanding that the contents will be handled confidentially. These are commercial documents that could give Kumba competitors an advantage should it become common knowledge. We confirm that both Mr Seck and Davidsson assured us that the matter would be treated in the greatest confidence.

7. We hereby respectfully request that:

   7.1 Should any allegation of a negative nature be levelled against either Kumba Resources Limited or Iscor Limited or Zinc Corporation of South Africa Limited, we request that you will inform us before including it in a report, in order to afford us the opportunity to provide you with evidence countering such allegations.

   7.2 The names of Iscor, Kumba and Zincor are removed from the list of companies who have contravened the OECD guidelines.

   7.3 That it would be recorded that their names we incorrectly included in the previous report.

   7.4 The letter addressed to you by Kumba, dated 6 November 2002, be included in the report you are in the process of finalising.

We trust that our discussion with Messrs Seck and Davidsson and the information we have provided previously (Annexure 5) and in this letter, will assist the Panel to give effect to our request.

As we have repeatedly stated, we strongly support any action taken to address the serious problems or bribery and corruption, and the enrichment of the "elite", which negatively impacts on the population of the DRC as a whole.

It would be appreciated if you could acknowledge receipt of this letter.

Yours faithfully

21/5/03

DOUGLAS TAYLOR
General Manager, New Business and Commodity Management
Strategy & Business Development
KUMBA RESOURCES LTD
Tel: +27 12 674 1223
Fax: + 27 12 664 5694
Mobile +27 83 609 1253

Cc Mr AS Minty
Acting Director General, Department of Foreign Affairs, RSA

Reaction No. 12



Brussels, 26 May. 2003.

Subject : Response of Umicore / Sogem to UN Report S/2002/1146

Dear Sir,

Please find attached copy of the response of Umicore / Sogem to the UN report sent today to His Excellency Dr. Kofi A. Annan.

Yours faithfully,

Thomas LEYSEN
Chief Executive Officer



Brussels, 26 May. 2003.

Subject : Response of Umicore / Sogem to UN Report S/2002/1146

Dear Secretary-General,

Please find attached the response of Umicore / Sogem to the above report. This response has been drafted in accordance with the conditions set out in UNSC 1457. Umicore / Sogem wish that the response and accompanying annex be published in full in the forthcoming addendum to the above report.

Yours faithfully,

RESPONSE OF UMICORE / SOGEM TO UNITED NATIONS REPORT S/2002/1146

Background

This response has been drawn up in accordance with the conditions set out in paragraphs 11 and 12 of United Nations Security Council Resolution 1457 dated 24 January 2003. It should also be considered in the context of a meeting with the Panel of Experts on the Illegal Exploitation of Mineral Resources of the Democratic Republic of Congo (the Panel) in Nairobi on 8 May 2003, and correspondence and documentation provided to Umicore's representative at this meeting (ref: EXPNATDRC/SOGEM). We request that this response be published in full in the addendum to the Panel's report.

Between the publication of the Panel's report in October 2002, Umicore / Sogem - hereafter referred to as Sogem - sent four letters[1] to the Panel (in addition to telephone calls and e-mails) requesting information on the reasons for its inclusion in Annex III to the report. Until the meeting held in Nairobi, no such information was produced by the Panel.

Response

Sogem has always been open and transparent concerning its activities in the DRC and has regularly kept the Panel, the Belgian Government and other agencies fully informed of its position. A special section of the Umicore group website was also set up in order to provide information on this issue to a broader range of interested parties.

The documents transmitted to Sogem by the Panel on 8 May 2003 provided no reference to the OECD Guidelines for Multinational Enterprises that were the basis for the Panel's inclusion of Umicore in Annex III of its report. Instead, the documents refered in broad terms to the activities of Umicore's partner MDM and the export of materials from the Eastern Democratic Republic of Congo. None of the information contained in the Panel's documentation was new (indeed most of the information contained in the documents had been provided by Umicore / Sogem). However, there are several key points that require clarification.

1. In the letter provided to Umicore the Panel claims that *"it is very difficult, if not impossible, to operate in this conflict zone without being associated with the military actors and / or the elite network"*. Whilst we agree that it is difficult to operate in this area without such associations, the case of our partner MDM has proved that it *is* possible:

[1] Letters dated 29 October,2002; 4 March 2003; 3 April 2003; 16 April 2003

Umicore is adamant that the activities of its partner MDM are free of any association with military actors and / or the *"elite network"*. Umicore has received written assurances from MDM to this effect. Furthermore, the independent civil society organization IPIS (International Peace Information Service) recently reviewed the position of Sogem and MDM as part of a wider study and stated (see also annex for full text):

"...we are of the opinion that the Belgian company SOGEM and its Congolese partners have never associated themselves to the military actors that are responsible for the monopolisation of the mining sector and that they have strongly resisted the disorganisation of the regional economic climate..... SOGEM's partners have always maintained their distance from the political and military power holders, although this attitude has rendered their commercial activities extremely difficult."

The difficulties encountered by legitimate companies in operating in such an environment cannot be better illustrated than in the case of MDM's tantalite activities. MDM has been active for a long time in this sector but its position was severely affected by the imposition of the SOMIGL monopoly in October 2000. MDM was unwilling to do business with this monopoly and has been unable to resume trading since then. Instead MDM has been forced to rely on cassiterite trading in order to ensure its survival.

2. The second argument of the Panel concerns the use of taxes that were paid to the Congolese tax authorities in South Kivu.

   All commercial operations, no-matter where they operate, are obliged to comply with the fiscal legislation applicable in that region or country. Neither Sogem nor MDM were ever in a position to second guess the RCD-G authorities' use of tax payments by MDM or indeed any other legitimate commercial operation, aid agency or international body. However, the continuation of a commercial relationship in this environment presents an ethical conundrum for multinational companies such as Sogem. The choice is very clear:

   a) Continue legitimate commercial activities thereby protecting not only our company's own interests but those of the whole range of stakeholders who depend to a greater or lesser extent on the continuation of our activities.
   b) Abandon a long-term commercial partnership in the region thereby leaving a void readily filled by less scrupulous operators and possibly the *"elite network"* itself.

   Sogem believes firmly that taking the first option is right given the circumstances that have prevailed in the East of Congo. Furthermore, there has never been any suggestion by the United Nations, civil society groups or the Belgian Government that legitimate business activity should be halted in the region. Indeed, the Belgian deputy Foreign Minister stated publicly in October 2002:

"One can put a stop to every economic activity because operating in failed states or areas of conflict is just too risky and too difficult. This attitude may be a very simple and radical solution to the problem, but it is not an attitude that contributes to the common good....one should have the courage to continue to operate in difficult circumstances and to do so in a disciplined and responsible way."[2]

Sogem's relationship with its partners in the region dates back long before the outbreak of hostilities in 1998 and we approach our partnerships in the region with a long-term perspective. In this context we feel that it is correct to continue our activities as long as we can be satisfied that our partners operate in total legitimacy and without contact with the *"elite network"* or any other politico-military elements. We believe that all our activities and those of our partners are carried out in accordance with the codes of business ethics and sustainability complying with the OECD guidelines to which Umicore and its subsidiaries such as Sogem are a signatory[3].

Conclusion

We understand that the whole issue of doing business in conflict areas such as the Eastern DRC is extremely charged and full of complexities. A recent OECD working paper[4] has gone some way toward crystalizing the debate but as yet there has been no definitive guide as to how multinational companies should carry out their activities in such troubled regions of the world.

Umicore and Sogem fully support the Panel's objectives as laid out by the Security Council. This support has been reflected in the overall degree of openness and cooperation evident in our meetings, correspondence and other communications. We will continue to support these objectives in whatever way we can through, among others, contacts with the OECD National Contact Point in Belgium. However, we feel that it is essential that the Panel distinguishes between legitimate, long term investors in this troubled region and the *"elite network"* and associated profiteers, shysters and criminals who are those responsible for the illegal exploitation of the DRC's resources.

Brussels, 26 May 2003.

<u>Annex</u> : Letter of 28 November 2002 from the International Peace Information Service to the Director of the Corporate Funding Programme, Belgium.

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[2] Minister Annemie Neyts-Uttyebroeck, Doing Business in Conflict Areas - Ethical and Legal Challenges, Brussels, 30 October 2002.

[3] Notably "The International Council on Mining and Metals Sustainability Charter" and "The Charter of Business and Society Belgium".

[4] OECD Working Papers on International Investment nr. 2002/1(May 2002): Multinational Enterprises in Situations of Violent Conflict and Widespread Human Rights Abuses.

ANNEX TO THE RESPONSE OF UMICORE / SOGEM TO UNITED NATIONS REPORT S/2002/1146



Antwerp, 28 November 2002

Attention: Fons Verplaetse, President Corporate Funding Programme

Dear Sir,

On the basis of our current analysis of the mining sector in the east of the Dermocratic Republic of the Congo (DRC) and the territory controlled by the Rassemblement Congolais pour la Démocratie (RCD-Goma), we are of the opinion that the Belgian company SOGEM and its Congolese partners have never associated themselves to the military actors that are responsible for the monopolisation of the mining sector and that they have strongly resisted the disorganisation of the regional economic climate.

Consideding their status as Congolese enterprises, the partners of SOGEM have continued to pay the taxes due to the public revenue institutions such as the Office Congolaise de Contrôle, OFIDA and DGRAD, even though these institutions have passed under the control of the RCD-Goma. SOGEM's partners have always maintained their distance from the political and military power holders, although this attitude has rendered their commercial activities extremely difficult.

First, following the creation of the'Société Minière des Grands Lacs'(SOMIGL) in November 2000, SOGEM has been obligated de *facto* to suspend its operations in the region. This suspension was a direct consequence of the difficulties its partner M.D.M. (Mudekereza Defays Minerais) encountered with the management of SOMIGL. In November 2000, the president of SOMIGL, Ms Aziza Kuisum-Gulamali obstructed the exportation of a transitory stock of coltan from M. D. M. This prevented the latter from honouring its commercial contract with its Belgian partner SOGEM. M.D.M's complaints vis-à-vis Ms Aziza Kuisum-Gulamali only resulted in a succession of harassments from the authorities of the RCD-Gorma, including some aggressive demands and threats of requisitioning.

It has to be noted that the authorities of the RCD-Goma only created SOMIGL to benefit as much as possible from the enormous price rises for coltan in the period November 2000-March 2001. This position has been illustrated by various declarations of their political leaders. We also observe that the president of SOMIGL, Ms Aziza Kuisurn-Gulamali, is the object of two judicial inquiries in Belgium and Switzerland for contraband and fiscal fraud. According to the Belgian prosecutor, the revenue of the transactions made by Ms Kuisum-Gulamali in the coltan and gold traffic have served to finance the rebellion of the RCD-Goma in the east of the RD Congo.

Secondly, the management of M. D. M., directly or through the 'Fédération des Entreprises du Congo', have maintained a consequent position vis-à-vis the political and military actors in the territory controlled by the RCD-Goma. For example, Mr Mudekereza - Director of M.D.M. who founded another trading post called GEMICOM in April 2001 - has protested vigorously against the creation of the'Congo Holding Development Company' (C. H. D.C.), an enterprise directed by agents of the RGD-Goma that has received a monopoly on the mining concessions producing coltan, cassiterite, gold and wolfram in the provinces of North and South Kivu as well as Maniema. However, considering the troubled situation of the mining sector in the region after the abolishment of SOMIGL, SOGEM has refrained from commercial relationships with GEMICOM.

Finally, it remains clear that neither SOGEM, nor its Congolese partners, have ever had any commercial relationship with SOMIGL or its agents during this whole period. Nevertheless, to assure M.D.M's economic survival, SOGEM has restarted its purchases of cassiterite treated by M. D.M. after the abolishment of SOMIGL (March 2001).

Generally, one has to acknowledge the pernicious consequences of the growing militarisation of the mining sector for most Congolese enterprises in the eastern Congolese provinces. In this regard, SOGEM's partners have informed the United Nations on the potentially negative consequences of a general embargo for the local trading posts.

Currently, the mining concessions and trading posts are increasingly monopolised by military actors, who are responsibie for a total criminalisation of the local economy and contribute to a generalised insecurity in the entire region. As a result, the economic weight of traditional economic operators continues to fail to the advantage of military-commercial alliances that operate more and more in the criminal or semi-criminal sphere. As a result, the other economic actors risk falling victim to the total arbitrarity of these military entrepreneurs, who continue to plunder the region for their own benefit.

Tim Raeymaekers

Jeroen Cuvelier

Cc :

His Excellency the Ambassador Mahmoud Kassem, President of the Panel of Experts on the illegal Exploitation of Natural Resources and Other Forms of Wealth in the Democratic Republic of the Congo

NV Sogem SA

M.D.M.

Reaction No. 13

Melkior Resources Inc.

Friday May 9, 2003
The Chairman
Expert Panel on Illegal Exploitation

Re: Congo

Message:

The Canadian Department of Foreign Affairs and International Trade has contacted us to suggest we reply to the Expert Panel concerning the inclusion of Melkior in Annex III a report dated October 16, 2002.

Melkior is a publicly traded company trading on the TSX Venture Stock Exchange and is in compliance with the Canadian Regulatory authorities. All our documentation, in keeping with regulatory compliance, is on public record and on deposit with the Quebec Securities Commission and with the TSX Venture Exchange. It is available to the public online at www.SEDAR.com .

Melkior negotiated certain mineral exploration agreements with Gecamines from 1996 to 1999 with the final agreements signed in 1999. The agreements covered mineral exploration, Melkior has not undertaken any mining or exploitation of any mineral or other resources in Congo up until the present. Mineral exploitation may result at some future date and if and when this occurs we would take all steps to be in compliance with all regulations.

As part of the mineral exploration program Melkior funded at its cost a geophysical survey to establish a baseline for future pollution control within the area to be explored. This illustrates good environmental compliance.

The agreements negotiated with Gecamines were in complete conformity with international mineral exploration and development agreements. Melkior employed the services of the legal firms Lavery de Billy in Canada and Decroo Desguins in Belgium. Melkior held a meeting in New York in 1998 with Canadian

996 4e Avenue Vald'Or Quebec J9P 1J7

UN Ambassador Fowler to advise of the planned activities to take all steps to be good corporate citizens.

Melkior has not undertaken any exploitation to date and would welcome any surveilance by your group which you may request to demonstrate compliance. We have read the OECD guidelines and we are in compliance with those and intend to remain in compliance.

We are in communication with the Canadian Government Authorities and intend to comply with all regulations, as we have done in the past.

We appreciate having concerns brought to our attention and look forward to maintaining complete compliance. Please advise us if we can supply additional information.

Yours sincerely,

Jens E. Hansen, P. Eng
Director
Melkior Resources Inc.

Reaction No. 14

BANRO CORPORATION
(formerly Banro Resource Corporation)

Dear Mr Rose

Banro Corporation – Report of the United Nations Expert Panel on the Exploitation of Natural Resources in the Democratic Republic of the Congo

As requested, I now record the following submissions in regard to Banro's request that its name be deleted from Schedule III to the Expert Panel's Interim Report, which lists entities which have allegedly breached OECD guidelines for the Conduct of Multinational Enterprises.

Banro is a public company, listed on the Toronto Stock Exchange. The majority of its shareholders are resident in the USA. Banro therefore has been careful to adhere to international best practice in its business dealings, both in Canada and in the DRC. I was the President of Banro and of its 93% owned Congolese subsidiary, Sakima, throughout the period of Sakima's exploration programme in the DRC, the expropriation of Sakima's assets and the subsequent litigation, which terminated in the signature of a settlement agreement and the reversal of the expropriation.

As you are aware I also am a director of multinational companies, listed in Johannesburg, London and New York, which are engaged in the production and marketing of diamonds, gold and platinum group metals. I therefore am accustomed to operating strictly within corporate ethical codes, which, inter alia, require conformance with OECD Guidelines.

To the best of my knowledge and belief Banro has never breached any of the relevant OECD guidelines. In support of this assertion, it is significant that although Banro ensured that all of Sakima's development obligations under its Mining Convention were scrupulously observed and timeously executed, Sakima's assets were expropriated both by the Government of the DRC in July 1998 and by the RCD (Goma) in July 2000. In each case the motivation for the expropriation was the mineral potential demonstrated by Sakima's successful exploration programme.

Banro has provided the Expert Panel with a number of clarifications and supplementary information on its activities in the DRC in a spirit of goodwill and cooperation. Banro intends to continue such constructive co-operation with the Expert Panel and restates its commitment to the OECD Guidelines.

Yours truly

Bernard van Rooyen
Director

Reaction No. 15

ASHANTI GOLDFIELDS COMPANY
ASHANTI GOLDFIELDS KIMIN

RESPONSE TO REPORT BY UN PANEL ON THE ILLEGAL EXPLOITATION OF NATURAL RESOURCES AND OTHER FORMS OF WEALTH IN THE DEMOCRATIC REPUBLIC OF CONGO

Executive Summary

Ashanti Goldfields Company Limited ("Ashanti"), which currently holds 86.2% interest in Ashanti Goldfields Kilo ("AGK", formerly known as Kilo-Moto Mining International or "KIMIN"), has attempted to conduct exploitation and mining activities in the DRC since 1996. This has not been possible due to a concatenation of events already explained to the Panel.

Throughout this six year period, there is a clear and unambiguous record of Ashanti dealing primarily and exclusively with central government in all matters: in respect of her rights in KIMIN and later, AGK, in respect of all fiscal payments to be made to the legal and authorized government of the day, and in respect of the granting of access to mine site, once Ashanti's rights in AGK were re-instated in June 2001.

Despite Ashanti's inability to conduct exploitation and mining of any kind in the DRC over the last six years, it has been guided by principles of good corporate governance as well as the OECD guidelines for multinational enterprises. Ashanti is also a member of Global Compact, a UN sponsored initiative and fully embraces the principles on governance promulgated by Global Compact regarding the conduct of business in line with established legal standards in the countries within which it operates.

Ashanti is currently in the process of paying salary arrears for all of KIMIN's ex workers, even though this is an obligation of KIMIN's (now AGK), and not Ashanti, at a time when AGK has no financial resources of its own. Ashanti has also started sending shipment of drugs, ranging between US$5,000 – US$10,000, on a quarterly basis to the mine site, to be distributed free of charge to AGK workers and their dependents through the local hospital.
Ashanti believes the discharge of AGK's obligations and the shipment of drugs, will signal our long-standing commitment to the province, and will help build bridges to that community, even as we attempt to establish a world class gold mine in the province.

Given Ashanti's record of activities in the DRC to date, and the weight of documentary evidence available to support its record, Ashanti asserts that there is no justifiable reason for its name to be mentioned in Annex III in the UN's report and requests the removal of its name from Annex III and from any document that alludes in any way to alleged impropriety and breach of conduct in the DRC.

Ashanti is thankful for the opportunity to appear before the Panel and will continue to cooperate fully with it, as and when necessary.

Reaction No. 16

The Final Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and other Forms of Wealth of the Democratic Republic of the Congo

Submission of Anglovaal Mining Limited ("Anglovaal")

in response to an invitation from the Panel of Experts to make a submission, following the extended mandate granted to the Panel by the Security Council, under Security Council Resolution 1457(2003)

SUBMISSION

1. Anglovaal strongly supports the view that the illegal exploitation of natural resources and other forms of wealth of the Democratic Republic of the Congo (**"DRC"**) must be stopped.

2. Anglovaal is most willing to co-operate as fully as possible with the Panel of Experts (**"the Panel"**) in its investigations to achieve this outcome.

3. Although the Republic of South Africa is not a member of the OECD, the OECD Guidelines for Multinational Enterprises (**"the OECD Guidelines"**) are generally consistent with statutory and corporate governance requirements prevailing in the Republic of South Africa. The OECD Guidelines are also broadly consistent with the internal policies and procedures of Anglovaal. Accordingly, the OECD Guidelines have the broad support of Anglovaal.

4. At its meeting with members of the Panel on 12 May 2003, following publication of the Report in which Anglovaal was identified as a company that was in violation of the OECD Guidelines, Anglovaal was advised in writing of the basis on which such finding was made. This was the following:

    4.1 the Panel had obtained information pointing to the fact that Anglo American was a shareholder of Anglovaal;

    4.2 the Panel had received information regarding the involvement of Anglo American in questionable commercial deals in the DRC;

    4.3 the relationship between Anglo American and Anglovaal raised questions of Anglovaal's adherence to good corporate governance, including the OECD Guidelines.

5. Anglovaal rejects the finding of the Panel that Anglovaal is in breach of the OECD Guidelines, on the basis set forth in paragraphs 4.1 to 4.3 above, or on any other basis.

6. Anglovaal has fully disclosed to the Panel the nature of the activities that have been and

are being undertaken by it in the DRC. These activities were and are being undertaken in a legal and transparent manner. They have not been, and are not being, carried out in breach of the OECD Guidelines.

7. Anglovaal has also fully disclosed to the Panel the details of the shareholding that Anglo American held in Anglovaal for a period of thirteen months, from early March 2002 to April 2003. These details are a matter of public record.

8. Anglovaal is a separate company from Anglo American. Even given the shareholding of Anglo American, Anglovaal has always been an independent company that has been controlled and managed by persons or institutions other than Anglo American.

9. Anglovaal rejects the conclusion reached by the Panel that Anglovaal can be found to have been in violation of the OECD Guidelines merely by association, by virtue of the fact that it has a shareholder, which is a separate company, that is allegedly in breach of the OECD Guidelines.

10. Anglovaal expresses concern that the Panel:

    10.1 published its final report without giving Anglovaal the opportunity to respond to the unfounded allegation that it was in breach of the OECD Guidelines;

    10.2 made a finding against Anglovaal merely by virtue of the identity and alleged activities of one of its shareholders; and

    10.3 in reaching its findings, failed to apply its own "reasonable standard of proof" under which it stated that it had operated (see paragraph 8 of the Report).

11. In conclusion, Anglovaal reiterates its denial that any of the activities undertaken by it or any of its subsidiaries in the DRC, are or have been in violation of the OECD Guidelines, which allegations have adversely affected the reputation of Anglovaal.

GJ Robbertze
SENIOR VICE-PRESIDENT : TECHNICAL SERVICES
For and on behalf of Anglovaal Mining Limited
5 June 2003

Reaction No. 17

RESPONSE FROM

CARSON PRODUCTS / L'OREAL SOUTH AFRICA

Meeting United Nations Exprt Panel on the Illegal Exploration of Natural Resources and other forms of Wealth of the DRC-Security Council Resolution 1457(2003) Paragraph 12.

Meeting held at United Nations Office in Nairobi, Kenya 28th April,2003 at 2.30pm

Following our meeting of the 28th April 2003 at 2.30pm at the United Nations
in Nairobi between yourself, Mr. Ismail Seck and Mr. P Davidson and further to the letter dated 28th April 2003 Ref EXPNATDRC/4/CARSON which I was handed at the meeting and further to my comments on these allegations where Carson Products of South Africa is mentioned as one enterprise through which
these natural resources are commercialized in South Africa, and where we are
identified as having contacts with the rebel movement RCD-G, and as a major buyer of coffee from the KIVU,s in the rebel controlled region of Goma, the illicit trading being carried out through the Rwandan Office of the Commercialization of Coffee.

1. Carson Products has no dealings in these matters whatsoever, and has never had any dealings with any rebel group or whoever in relation to what the company sells in the region to its Distributors, and hence reject and categorically deny these claims, and as discussed would like the United Nations Panel of Experts to source any names or contacts with Carson Products South Africa (now L Oreal South Africa , of which Soft Sheen Carson is a Division of), as we are appalled at these allegations.

2. As detailed to you Soft Sheen Carson is a manufacturer of Hair care and Toiletries based in Johannesburg South Africa, the full range and price list
and catalogue was handed to you.

3. As discussed we deal with Distributors in the Congo, namely Femco, to which I handed you a full set of invoices of product delivered to the DRC dating back from 1998, in that time we have only had 2 Distributors Nova Atlas in the early days and Femco who is our current Distributor.

As advised all dealings with our Distributors are done on and cash or guarantee up front and payment is in USD$ as per the copy invoices given to you. Goods are shipped direct to the Distributors outlet, in this case Kinshasa, or as prescribed by the Distributor to say Lubambashi if required.

4. Trading in Africa with a commodity like Ethnic Hair care might as stated lead to it being traded onwards, of which the Company has no control, the demand for our brands is indicative of the growth the company has shown over
the last 6 years, and the Congo is no exception, in fact due to the civil war product shortages are at a peak, leading to our brands being highly sort
after, and products that can be traded at a huge margin to the seller, and this could lead to bartering of the products, BUT we the supplier have been
paid in USD before the goods leave, and therefore have no control after they

reach the country of destination.

An example of this is Uganda, which everyone knows trades extensively into the Eastern Congo through illicit border dealings out of Kampala, as shortages in the Goma region and far beyond are always an issue as is servicing regions that are at war, and therefore the barter issue is even more an option as people in this region might not have access to cash funds,
but I repeat the Company has nothing to do with this activity and cannot be held responsible if someone or some organization is using its name in vain. Our distributor in Uganda is Hanifa Bros operating out of Kampala.

5.I have left you with a detailed operational presentation of L Oreal South Africa and inside you will find all the details related to Soft Sheen Carson.

6. Carson Products was a Public Company until end 2000 when it was purchased
by L Oreal and now falls under its public company listing, as stated should you require the financial reports of the company prior or post L Oreal; takeover they are available for you, and nowhere will you find any reference
to dealings in Commodities listed in the Security Council Resolution 1457(2003) paragraph 12.

As stated above, we are more than willing to assist you in your enquiry, and
anything you require if you can contact me at the above e mail or by phone on 27.83.2894268 mobile I will gladly assist you.

Trading in Africa has proved a real challenge to our Company, and has required years of dedicated people to grow our status in the market, and quite frankly to have these allegations thrown at us is not acceptable, and as stated you would revert to your sources to get the contact peoples names and revert to me asp so this matter can be sorted out as I feel its a case of someone using our name illegally as we are the producers of the traded commodity, which they are abusing for their own gain.

I would like to thank you and your team for the warm reception given to me to put forward our Company's case and I look forward to a swift resolution of this matter and the removal of Carson Products from the Resolution 1457 (2003) paragraph 12.

The Company is happy that should the United Nations wish to use this statement in their response they can gladly do so.

Yours Truly,

David St Quintin
Managing Director
L Oreal South Africa
153 Catherine Street
Wendywood
Johannesburg
South Africa

Reaction No. 18



Statement by Anglo American plc on its involvement in the Democratic Republic of Congo (DRC)

Anglo American has had no operations in the DRC for more than 20 years. Thus we were surprised to appear in an Annex to the UN Panel's Report for having allegedly breached the OECD Guidelines for Multinational Enterprises.

Seven months after publication of the UN Panel's Report we had the opportunity of meeting with the UN Panel and of learning the nature of their concerns. We made clear our support for the Panel's work in uncovering any wrong doing in the DRC and addressing the human tragedy that has unfolded in that country. However, we expressed our grave concern that the Panel had not mentioned the allegations made against us in advance of publication, nor given us a chance to respond to them. Furthermore, for seven months, no details of the allegations were provided, thereby preventing us from being able to defend ourselves.

At the meeting, the Panel stated that it had concerns that 'inappropriate payments' might have been made so as to reduce substantially the amounts payable to the Congolese authorities in respect of the Kolwezi Tailings Projects. The Panel did not offer any evidence of what 'inappropriate payments' might have been made, by whom, to whom, by what means or when.

At the meeting, and subsequently in writing, we explained the circumstances in which the profile of payments provided for under the relevant contracts in connection with the Kolwezi Tailings Project had been changed - albeit not involving a significant reduction in the total amount which might ultimately have become payable. More significantly, we pointed out that our joint venture with American Mineral Fields and Gecamines had never received title to the Kolwezi Tailings Project and so none of the contractual payments had, as a result, fallen due or been made. At no stage were 'inappropriate payments' provided for or made.

Anglo American has a longstanding prohibition on the payment of bribes or other corrupt practices and at all times in its dealings in the DRC sought to observe international legal norms. We sold our potential interest in the Kolwezi Tailings Project for US$3 million in 2002 in part because of the difficult environment in the DRC, including conflict and abuse of human rights. Anglo American was not involved in a breach of the OECD Guidelines and should not have been included by the Panel in the Annex III list. Moreover, we believe that had the Panel requested the information, recently provided by Anglo American, prior to publication of the report, we would not have been so listed.

In view of the above, Anglo American requests that its name be removed from Annex III.

12th June 2003

Anglo American plc
20 Carlton House Terrace London SW1Y 5AN United Kingdom

Reaction No. 19



12th June 2003

United Nations Expert Panel

Kind Attn: Mr.Alex Rose

Dear Mr.Rose,

Thank you for your email dated 12/06/03. Kindly publish the following statement :

" The representatives of Afrimex (UK) Limited had a very constructive dialogue with the UN Expert Panel on DRC and believe that the panel was satisfied with the explanation and information provided. Accordingly, we request the panel to recommend the removal of our name from the forthcoming UN report."

We once again thank you for your cooperation in this matter.

Yours Sincerely,

Mrs. Diti Kotecha
Director

AFRIMEX (U.K.) LTD
Ramnik House, Kingswood Road, Wembley Park, Middlesex HA9 8JR, England, U.K.

Reaction No. 20



ALEX STEWART INTERNATIONAL CORPORATION
CADDICK ROAD, KNOWSLEY INDUSTRIAL ESTATE, MERSEYSIDE L34 9ER, ENGLAND

KAS/CS
May 27th, 2003

United Nations Expert Panel

Subject : Violation of OECD Guidelines : Annex III

Dear Sirs ,

1) Please receive, in the attached appendix, a copy of our letter ASIC 030513 which was sent to you by E-mail on May 13, 2003.

2) Since the publication of your Final Report S/2002/1146 , our company ceased all activities in the concerned territories: Uganda, Rwanda, Burundi and in the Eastern of Congo under control of rebel movements.

3) ASIC Congo, is the only subsidiary of our group in RDC, it operates in Katanga (Lubumbashi, Likasi, Kolwezi).

   From Lubumbashi, it is extremely difficult to access any territories under the control of the rebel movements.

   ASIC Congo has never had to sample or to analyse products other than Concentrates of Copper - Cobalt or metals/alloys produced by Gecamines and other well established companies in the Katanga province of Congo (DRC).

4) We wish that our company, ALEX STEWART (Assayers) Ltd, is removed from the annex III as it conforms totally to the OECD guidelines.



We undertake to:

- Respect the directives of the Expert Panel group for the DRC.
- Continue co-operating with the Expert Panel on the DRC
- Pass to the Alex Stewart Group and the Expert Panel, any information, including the identity of the operators involved, about suspect ores originating from conflict areas in the Great Lakes Region
- Avoid treating suspect ores and metals without the accord of the Expert Panel or any other UN body charged with monitoring exploitation of resources in the DRC
- Raise awareness within the Alex Stewart Group of the OECD Guidelines and fully comply with its requirements

We hope that these measures agree with your wishes.

With best regards
ALEX STEWART (ASSAYERS) LTD

K. Alex Stewart
Chairman and Chief Executive

United Nations Expert Panel

Dear Sirs

Please note that the only client Alex Stewart has been working for is a company called Chemie Pharmacie Holland (known as CPH) and not for Eagle Wings Resources International.

This company had, at that time, a contractual relationship with Eagle Wings Resources International, which covered a broad scope, including management related activities such as financing and logistics.

At the time of the operations the weighing / sampling / analyses activities were managed by CPH who in turn gave these activities to Alex Stewart International Corporation B.V., located in Rotterdam on a sub-contractual basis.

Since Alex Stewart International had no business relationship with EWRI; it assumes that it does not need to assist the UN any further in relation to certificates issued (we never issued any reports to EWRI, we only issued certificates for CPH !)

We hope that the above is sufficient explanation but in case you may have any further questions / queries / remarks please let me know.

Best regards,
ALEX STEWART INTERNATIONAL CORPORATION

K. Alex Stewart
Chairman

Reaction No. 21

KEMET® *Electronics Corporation*

2835 Kemet Way • Simpsonville, South Carolina 29681

June 5, 2003

U.N. Panel of Experts
EXPNATDRC/United Nations Office in Nairobi
P. O. Box 30302
00100 Nairobi, Kenya

Ladies and Gentlemen:

On May 6, 2003, KEMET Electronics Corporation responded to the U.N. Panel of Experts (the 'Panel') requesting the company be removed from Annex III in report S/2002/1146. During that month, KEMET had a very positive dialogue with the Panel of Experts. As part of this communication, KEMET outlined its position in the tantalum supply chain and also its proactive response, May 2001, to earlier reports on activities in the DRC.

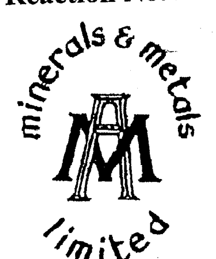
As a result of this dialogue with the Panel, we respectfully request KEMET be removed from the list of companies asserted to be acting in a manner not consistent with OECD guidelines.

Respectfully submitted,

KEMET Electronics Corporation

Dave Reynolds
Anode Manufacturing Plant Manager

Reaction No. 22



A&M Minerals and Metals Ltd
17 Devonshire Square London EC2M 4SQ

UN Committee Draft Summation of the meeting on 14th May in Paris

Some of the personnel of A&M have been buying Congolese tantalite since the 1960's, having been involved with Sominki, the largest tin tantalite miner in Zaire. A&M has never, however, had a local presence in the DRC. A&M has purchased Congolese tantalite via established merchants mainly based in Belgium. These purchases were made on an in warehouse Antwerp Rotterdam or Singapore Basis. The purchases were made at the full world market price. A&M never knew that there was a problem until the Expert Panel published its original report in April 2001. Since 2001 A&M has bought very little if any Congolese tantalite. A&M wishes to support the Expert Panel and the UN in general in its efforts to end the conflict in the DRC and to eliminate the financing of political factions by the ruthless exploitation of the raw material wealth of the DRC. A & M does ,however, feel that a way should be found to support the artisanal miners, many of whom had made some money for the first time in their lives by their own mining of tantalite. It was noted by A&M that attempts in the past to do business with the authorities in Kinshasha have fallen foul of bureaucratic incompetence and corruption. A&M made it clear that they wished to be removed from appendix III of the report. The panel has made available a copy of the OECD guidelines with which it was agreed that A&M would abide with in future.

J.M.McCombie
Managing Director



SOCIÉTÉ ANONYME

ADMINISTRATION

Le 22 mai 2003

Reaction No. 23

Monsieur le Secrétaire Général,

Nous vous prions de trouver ci-joint, le Memorandum de notre Banque et de notre maison-mère FORTIS BANQUE contenant, en application du point 11 de la résolution 1457 (2003) du 24 janvier 2003 du Conseil de Sécurité de l'O.N.U., les observations de nos deux sociétés aux griefs du Groupe d'Experts qui nous ont été communiqués dans un document du 8 mai 2003, signé par l'Ambassadeur Mahmoud KASSEM accompagné de treize pièces subdivisées en quatre lots.

Notre Memorandum contient en première partie l'historique de toutes les démarches que nous nous sommes vus contraints d'accomplir pour obtenir ce document.

Nous ne pouvons que déplorer les procédures du Groupe d'Experts qui nous ont obligés à plus de six mois de démarches comprenant d'incessants coups de téléphone, fax, e-mail et courriers ainsi qu'un voyage de deux dirigeants à New York et un autre à Nairobi pour finalement obtenir un document sans beaucoup de consistance et surtout sans aucune preuve. Nous ne pouvons admettre que, contrairement à toutes les règles de droit et tous les principes en vigueur, c'est à nous qu'il appartient d'apporter la preuve contraire d'allégations non précisées.

En deuxième partie, nous commentons et réfutons point par point chacun des griefs formulés pour aboutir à la conclusion qu'aucun grief n'a jamais été formulé à l'égard de FORTIS BANQUE et que ceux formulés à l'égard de notre Banque ne sont pas fondés.

Dès lors, c'est à tort que les noms de nos deux sociétés ont été mentionnés dans l'annexe III du Rapport du Groupe d'Experts de l'O.N.U. sur l'Exploitation Illégale des Ressources Naturelles et autres Formes de Richesses en République Démocratique du Congo, comprenant la liste des entreprises considérées par le Groupe d'Experts comme ayant violé les principes directeurs de l'O.C.D.E.

En outre, nous rappelons qu'en violation de toutes les règles uniformément admises dans les procédures judiciaires, nos sociétés n'ont été ni informées, ni interrogées, ni mises en présence du moindre élément de preuve, ni à fortiori mises en état de se défendre avant que leur nom ne soit publié dans l'annexe III du Rapport du Groupe d'Experts.

Nous sollicitons donc avec insistance votre intervention et celle du Conseil de Sécurité de l'O.N.U. pour que nos deux sociétés soient radiées de cette liste.

Cette radiation devra être accompagnée d'un commentaire motivé afin de permettre à nos deux sociétés de réhabiliter leur honneur et leur réputation auprès de nos collaborateurs, nos clients, nos actionnaires, nos concurrents, l'ensemble de notre milieu professionnel et la presse belge.

Enfin, toujours conformément au point 11 de la résolution 1457 (2003) du 24 janvier 2003 du Conseil de Sécurité de l'O.N.U., nous vous saurions gré de veiller à ce que notre Memorandum ainsi que la présente lettre soient intégralement publiés en annexe au Rapport du Groupe d'Experts.

Nous nous réservons toutefois de défendre notre réputation par toute voie de droit.

Nous vous prions de croire, Monsieur le Secrétaire Général, à l'assurance de notre considération très distinguée.

BELGOLAISE

D. CUYLITS
Président
du Comité de Direction

M.Y. BLANPAIN
Président
du Conseil d'Administration

Copie à :
M. Louis MICHEL, Vice-Premier Ministre et Ministre des Affaires Etrangères, démissionnaire
Mme Annemie NEYTS, Ministre Adjointe aux Affaires Etrangères, Chargée de l'Agriculture, démissionnaire
M. Jean DE RUYT, Ambassadeur de Belgique auprès des Nations Unies, New York
M. Mahmoud KASSEM, Président du Groupe d'Experts
M. Amin MOHSEN, Africa Division - DPKO - des Nations Unies
M. Roland CHARLIER, Président du Point de Contact National Belge de l'OCDE
M. Maurice LIPPENS, Président du Conseil d'Administration de FORTIS
M. Anton van ROSSUM, Chief Executive Officer de FORTIS
M. Herman VERWILST, Président du Comité de Direction de FORTIS BANQUE
M. Filip DIERCKX, Administrateur Délégué de FORTIS BANQUE

MEMORANDUM

Adressé par FORTIS BANQUE et la BANQUE BELGOLAISE

à Monsieur KOFI A. ANNAN, Secrétaire Général de l'O.N.U.

dans le cadre du Rapport du Groupe d'Experts de l'O.N.U. sur l'Exploitation Illégale des Ressources Naturelles et autres Formes de Richesses en République Démocratique du Congo

en application du point 11 de la résolution 1457 (2003) du 24 janvier 2003 du Conseil de Sécurité de l'O.N.U.

en réponse au document du 8 mai 2003 de l'Ambassadeur Mahmoud KASSEM, Président du Groupe d'Experts



MEMORANDUM

Adressé par FORTIS BANQUE et la BANQUE BELGOLAISE

à Monsieur KOFI A. ANNAN, Secrétaire Général de l'O.N.U.

dans le cadre du Rapport du Groupe d'Experts de l'O.N.U. sur l'Exploitation Illégale des Ressources Naturelles et autres Formes de Richesses en République Démocratique du Congo

en application du point 11 de la résolution 1457 (2003) du 24 janvier 2003
du Conseil de Sécurité de l'O.N.U.

en réponse au document du 8 mai 2003
de l'Ambassadeur Mahmoud KASSEM, Président du Groupe d'Experts

I. Représentation de FORTIS BANQUE par la BANQUE BELGOLAISE

FORTIS BANQUE a donné procuration à la BANQUE BELGOLAISE pour la représenter dans toutes les démarches utiles et nécessaires relatives à sa mention dans l'annexe III du Rapport du Groupe d'Experts de l'O.N.U. sur l'Exploitation Illégale des Ressources Naturelles et autres Formes de Richesses en République Démocratique du Congo comprenant la liste des entreprises considérées par le Groupe d'Experts comme ayant violé les principes directeurs de l'O.C.D.E. (annexe 1).

II. Historique des démarches entreprises depuis la publication du Rapport

Avant de répondre concrètement au document du 8 mai 2003 de l'Ambassadeur Mahmoud KASSEM, Président du Groupe d'Experts, FORTIS BANQUE et la BANQUE BELGOLAISE souhaitent rappeler les différentes démarches qu'elles ont entreprises depuis la publication le 21 octobre 2002 du Rapport du Groupe d'Experts.

Tout d'abord, nous tenons à souligner qu'à aucun moment ni FORTIS BANQUE, ni la BANQUE BELGOLAISE, ni aucune autre société de notre groupe bancaire n'ont été interpellées, ni approchées de quelque façon que ce soit par le Groupe d'Experts dans le cadre de son enquête, alors que notre groupe bancaire est un acteur économique important et historique en République Démocratique du Congo, puisque présent depuis 1909.

Ce n'est que lorsque le Rapport du Groupe d'Experts a été rendu public le **21 octobre 2002**, que nous avons constaté que FORTIS BANQUE et la BANQUE BELGOLAISE étaient mentionnées dans l'annexe III comprenant la liste des entreprises considérées par le Groupe d'Experts comme ayant violé les principes directeurs de l'O.C.D.E.

Par notre courrier du **25 octobre 2002** (annexe 2) adressé à Monsieur KOFI A. ANNAN, Secrétaire Général de l'O.N.U., nous nous sommes étonnés de la mention de notre Banque et de notre maison-mère sur cette liste, en insistant pour connaître les griefs que le Groupe d'Experts aurait à formuler à l'égard de notre Banque.

L'Ambassadeur Mahmoud KASSEM, Président du Groupe d'Experts, a accusé réception de notre courrier le **19 novembre 2002** en précisant que le Conseil de Sécurité poursuivait l'examen du Rapport et que le Groupe d'Experts nous recontacterait *« en temps utile, lorsque le Conseil aura mis un terme à ses délibérations et adopté une décision finale »* (annexe 3).

Par notre lettre du **26 novembre 2002**, nous avons avisé l'Ambassadeur Mahmoud KASSEM que nous constations avec regret que nous ne recevions pas l'occasion de nous défendre ni de connaître les griefs éventuellement formulés à notre égard (annexe 4).

Le **24 janvier 2003**, le Conseil de Sécurité a adopté la résolution 1457 (2003) par laquelle, notamment en son point 12, le Conseil de Sécurité priait *« ... le Groupe d'Experts de communiquer aux particuliers, aux entreprises et aux Etats visés qui en font la demande toute information les mettant en cause ... »* et, en son point 11, invitait *« ... les particuliers, les entreprises et les Etats nommément mentionnés dans le dernier Rapport du Groupe à faire parvenir au Secrétariat, au plus tard le 31 mars 2003, les observations qu'ils pourraient avoir à formuler en réponse ... »* et priait *« le Secrétaire général de prendre les dispositions voulues pour faire publier ces observations, à la demande ... des entreprises ... en annexe à ce rapport du Groupe...».*

Dès lors, par notre courrier du **3 février 2003**, nous avons à nouveau demandé à l'Ambassadeur Mahmoud KASSEM de nous indiquer les griefs qui avaient motivé la mention de notre maison-mère FORTIS BANQUE ainsi que de notre Banque sur l'annexe III du Rapport du Groupe d'Experts et à nous communiquer toutes informations et pièces en possession du Groupe d'Experts relatives à ces griefs, en insistant pour recevoir une suite rapide afin de pouvoir adresser nos observations endéans les délais prescrits par la résolution 1457 (2003) (annexe 5).

Le **25 février 2003**, le Cabinet de Madame Annemie NEYTS, Ministre Adjointe aux Affaires Etrangères en Belgique, nous avisait que les membres du Groupe d'Experts arriveraient à New York le lundi 3 mars 2003 et y resteraient tout le mois de mars afin d'être disponibles pour les entreprises et personnes qui souhaiteraient les contacter ou les rencontrer, nous invitant à fixer un rendez-vous avec le Groupe d'Experts à partir de ce 25 février en nous adressant à Monsieur Amin MOHSEN à l'O.N.U. (annexe 6).

Pendant cette semaine notre Secrétaire Général a tous les jours tenté en vain de joindre Monsieur Amin MOHSEN, tant par e-mail que par téléphone pour obtenir un rendez-vous entre le 5 et le 7 mars.

C'est suite à l'intervention de Monsieur Jean DE RUYDT, Ambassadeur auprès de la Représentation de la Belgique auprès des Nations Unies que finalement Monsieur Marc Yves BLANPAIN, Président du Conseil d'Administration de notre Banque et Président du Conseil d'Administration de plusieurs sociétés du Groupe FORTIS ainsi que Monsieur Baudouin LEMAIRE, Secrétaire Général de notre Banque ont obtenu un rendez-vous le **7 mars 2003** à New York avec le Groupe d'Experts.

Monsieur Marc Yves BLANPAIN et Monsieur Baudouin LEMAIRE se sont rendus à cette réunion accompagnés de Madame Carine PETIT, Conseiller auprès de la Représentation de la Belgique auprès des Nations Unies.

Au cours de cette entrevue, Monsieur Marc Yves BLANPAIN a rappelé le contexte de sa démarche à l'égard du Groupe d'Experts, la synthèse de son intervention est jointe en annexe (7).

A notre étonnement, les Experts n'ont communiqué aucune information sur les raisons qui les avaient conduits à mentionner FORTIS BANQUE et la BANQUE BELGOLAISE dans l'annexe III du Rapport.

Le **13 mars 2003**, nous avons une nouvelle fois écrit à l'Ambassadeur Mahmoud KASSEM pour lui confirmer notre demande de connaître ces raisons, actant que lors de la réunion du 7 mars 2003 les Experts ne nous avaient communiqué aucune information quant à celles-ci, que leur volonté était néanmoins d'établir un dialogue constructif, que nous serions invités début avril à entamer ce dialogue et que la date impartie aux entreprises pour faire valoir leurs moyens de défense serait reculée (annexe 8).

Le **2 avril 2003**, Monsieur Pall DAVIDSSON, Political Officer à l'O.N.U. à Nairobi, nous a adressé copie de la note publiée par le Conseil de Sécurité le 24 mars 2003, reportant au 31 mai 2003 la date limite fixée aux entreprises pour faire parvenir leurs observations au Secrétariat de l'O.N.U. (annexe 9).

Le **8 avril 2003**, nous avons insisté auprès de lui pour connaître la procédure que le Groupe d'Experts comptait adopter pour informer les entreprises (annexe 10).

Le **9 avril 2003**, l'Ambassadeur Mahmoud KASSEM nous a écrit, nous exposant la procédure que le Groupe d'Experts comptait adopter et invitant nos représentants à se rendre à Nairobi entre le 14 et le 30 avril 2003 pour rencontrer des membres du Groupe d'Experts précisant que « *The degree of cooperation already developed between BANQUE BELGOLAISE and the Panel suggests that this meeting could produce positive outcomes, including arriving quickly at a mutually satisfactory solution to this matter.* » (annexe 11).

En conséquence, le **14 avril 2003**, après plusieurs échanges téléphoniques avec Monsieur Pall DAVIDSSON, Monsieur Baudouin LEMAIRE a formalisé auprès de celui-ci une demande de rendez-vous pour Monsieur Daniel CUYLITS, Président du Comité de Direction de la BANQUE BELGOLAISE et lui-même avec le Groupe d'Experts à Nairobi le 28 avril 2003 (annexe 12).

En raison de besoins de préparatifs, le Groupe d'Experts a repoussé le rendez-vous au mois de mai (annexes 13 à 15). Monsieur Marc Yves BLANPAIN, Président du Conseil d'Administration de la BANQUE BELGOLAISE et Président du Conseil d'Administration de plusieurs sociétés du Groupe FORTIS ainsi que Monsieur Baudouin LEMAIRE, Secrétaire Général de la BANQUE BELGOLAISE se sont donc rendus à Nairobi pour rencontrer le Groupe d'Experts le 8 mai 2003.

Le **8 mai 2003**, Monsieur Marc Yves BLANPAIN et Monsieur Baudouin LEMAIRE ont eu deux entretiens à Nairobi, le premier, le matin, avec Messieurs Bruno SCHIEMSKY, Christian DIETRICH et Pall DAVIDSSON, en présence de Monsieur de CARLI, Chargé de la sécurité.

Un document daté du 8 mai 2003 et signé par l'Ambassadeur Mahmoud KASSEM reprenant la synthèse des griefs formulés par le Groupe d'Experts à l'encontre de FORTIS BANQUE et la BANQUE BELGOLAISE accompagné de treize pièces subdivisées en quatre lots, a été remis à nos représentants en leur demandant de commenter ceux-ci.

Monsieur Marc Yves BLANPAIN s'est étonné de la légèreté de ces documents et a demandé la production de preuves, il lui a été répondu que le Groupe d'Experts ne fournirait pas de preuves, que c'était aux personnes concernées à apporter la preuve contraire. Nos représentants ont ensuite commenté le document.

L'entretien s'est déroulé dans un climat extrêmement tendu. Voir le procès-verbal dressé par nos représentants en annexe (16).

A la demande de nos représentants un second entretien a eu lieu, l'après-midi, avec l'Ambassadeur Mahmoud KASSEM, assisté de Madame Hannah TAYLOR, Membre du panel chargé des affaires politiques.

L'Ambassadeur Mahmoud KASSEM a réitéré son souhait d'arriver à un consensus avec nous. Ensuite, les documents reçus lors de la première réunion ont à nouveau été commentés.

L'Ambassadeur Mahmoud KASSEM nous a invités à faire part de nos observations, conformément à l'article 11 de la résolution 1457 (2003) du 24 janvier 2003 du Conseil de Sécurité de l'O.N.U., pour le 31 mai 2003, en souhaitant que la probité de nos deux sociétés soit reconnue. Voir le procès-verbal dressé par nos représentants en annexe (17).

III. Présentation de la BANQUE BELGOLAISE

A) Historique de la BANQUE BELGOLAISE

Avant d'aborder nos observations quant aux griefs formulés à notre égard par le Groupe d'Experts, nous tenons à vous rappeler que la BANQUE BELGOLAISE trouve son origine dans la BANQUE DU CONGO BELGE constituée le 11 janvier 1909 sous forme de société anonyme belge.

La BANQUE DU CONGO BELGE avait établi son siège social à Bruxelles et exerçait l'essentiel de son activité en Afrique, au Congo Belge d'abord puis au Burundi et au Rwanda, territoires placés sous mandat belge après la première guerre mondiale.

Par convention du 7 juillet 1911, la Colonie du Congo Belge confia à la BANQUE DU CONGO BELGE le privilège d'émission pour une période de 25 ans prolongée ensuite jusqu'au 1er juillet 1952.

Elle ouvrit en 1914 un siège à Londres et en 1919 une succursale à Anvers.

Le 16 septembre 1952, peu après la fin de son privilège d'émission, la BANQUE DU CONGO BELGE se transforma en société congolaise par actions à responsabilité limitée et transféra son siège social à Léopoldville (actuellement Kinshasa) tout en maintenant son activité de banque commerciale à Bruxelles, Anvers et Londres.

Quand il fut décidé que le Congo allait devenir un Etat souverain, le 30 juin 1960, il devint indiqué de constituer deux sociétés distinctes, l'une de droit belge, ayant son siège social en Belgique et l'autre de droit congolais ayant son siège social à Kinshasa, de manière telle que chacune des deux banques fut soumise au régime juridique propre du pays où s'exerçaient ses activités.

La BANQUE BELGO-CONGOLAISE fut ainsi constituée le 14 avril 1960, sous la forme d'une société anonyme de droit belge à laquelle la BANQUE DU CONGO BELGE fit apport de son actif et de son passif en Europe, tandis que la BANQUE DU CONGO BELGE, société de droit congolais avec son siège social à Kinshasa, adopta la dénomination sociale BANQUE DU CONGO. Il résulta de la création de la nouvelle banque en Belgique que toutes les opérations qui trouvaient leur point de départ au Congo et leur aboutissement en Belgique ou à Londres, ou inversement et qui précédemment étaient du ressort exclusif de la BANQUE DU CONGO BELGE, furent dorénavant traitées par deux établissements entièrement distincts, agissant l'un vis-à-vis de l'autre en collaboration étroite mais en qualité de banquiers correspondants.

En 1965, l'appellation BELGOLAISE fut adoptée comme dénomination sociale abrégée de la société belge.

En 1973, l'appellation complète de la société belge fut modifiée en BANQUE BELGO-ZAIROISE et de la société congolaise en BANQUE COMMERCIALE ZAIROISE. En 1995, l'appellation complète de la société belge fut modifiée en BANQUE BELGOLAISE et en 1997 celle de la société congolaise en BANQUE COMMERCIALE DU CONGO.

Ces quinze dernières années, la BANQUE BELGOLAISE a diversifié son activité vers la majeure partie de l'Afrique sub-saharienne.

B) Le souci et la déontologie de compliance de la BANQUE BELGOLAISE

La BANQUE BELGOLAISE exerce son métier dans un souci permanent de strict respect des normes nationales et internationales et de la déontologie bancaire.

Elle a adopté une Charte contenant des principes de compliance (annexe 18) et a diffusé un Code de déontologie dans les banques faisant partie de son réseau (annexe 19).

Elle a chargé un Responsable de la Banque de la fonction de Compliance Officer (annexe 20).

Notre Banque a mis en pratique une procédure d'analyse compliance des nouveaux clients (annexe 21) et de surveillance des mouvements en compte de sa clientèle (annexe 22).

Enfin, dans le cadre des procédures relatives à la prévention du blanchiment des capitaux nous avons mis en place une procédure de dénonciation auprès de la CETIF (Cellule de Traitement des Informations Financières) des opérations suspectes de nos clients (annexe 23).

IV. Résultats de la BANQUE COMMERCIALE DU CONGO

Nous produisons en annexes (24 à 28), des extraits des brochures « Rapports et Bilans » de la BANQUE COMMERCIALE DU CONGO des cinq dernières années où l'on peut constater que les résultats de cette banque sont en régression constante et qu'elle ne s'est donc pas enrichie par le pillage des ressources naturelles et autres formes de richesse de la République Démocratique du Congo.

V. *Observations quant aux griefs formulés par le Groupe d'Experts*

Un document signé par l'Ambassadeur Mahmoud KASSEM reprenant les griefs formulés par le Groupe d'Experts à l'égard de FORTIS BANQUE et de la BANQUE BELGOLAISE accompagné de treize pièces subdivisées en quatre lots, a été remis à nos représentants le 8 mai 2003 à Nairobi (annexe 29).

A) Absence de griefs à l'égard de FORTIS BANQUE

Il convient de relever que tant dans le Rapport du Groupe d'Experts que dans le document visé ci-dessus et les pièces jointes qu'au cours des réunions intervenues entre nos représentants et le Groupe d'Experts, jamais aucun fait n'a été reproché à FORTIS BANQUE, les griefs allégués ne concernant que la BANQUE BELGOLAISE.

B) Griefs formulés à l'égard de la BANQUE BELGOLAISE

Dans le Rapport du Groupe d'Experts, aucun grief n'est formulé à l'égard de la BANQUE BELGOLAISE. Son nom est uniquement mentionné au point 55 où il est reproché à la société ORYX NATURAL RESOURCES d'avoir effectué un paiement de USD 35.000 en faveur d'AVIENT LIMITED au départ de son compte auprès de la BANQUE BELGOLAISE.

Monsieur Marc Yves BLANPAIN et Monsieur Baudouin LEMAIRE se sont déjà expliqués sur cette question lors de leur entrevue du 8 mai 2003 à Nairobi (voir annexe 16).

Les observations de notre Banque à ce sujet sont en outre développées au point 1.3. ci-après.

Revenons au document de l'Ambassadeur Mahmoud KASSEM du 8 mai 2003 accompagné de treize pièces subdivisées en quatre lots, mentionnant les griefs que le Groupe d'Experts allègue à l'égard de la BANQUE BELGOLAISE.

Ces griefs sont successivement examinés ci-après.

1. __Premier grief__ :

« ... BELGOLAISE BANK is the holder of accounts for members of the elite network from Kinshasa, i.e., George FORREST and his companies and ORYX NATURAL RESOURCES. Further, MIBA accounts held by BELGOLAISE BANK have been used to conduct financial transactions involving the purchase of armaments by the Government of the DRC. »

Les pièces faisant l'objet du lot 4 concernent le grief relatif aux sociétés du Groupe FORREST et les pièces faisant l'objet des lots 2 et 3 concernent le grief relatif à la société MIBA.

1.1. Les sociétés du Groupe FORREST

Les relations de notre groupe bancaire avec le Groupe FORREST remontent à plusieurs décennies. Ceci s'explique par notre présence au Congo depuis 1909, tandis que le Groupe FORREST y est actif depuis 1922.

Ce groupe a débuté dans le transport, puis s'est progressivement orienté vers l'exploitation minière dès les années 30 et a développé au début des années 50 une activité de génie civil et de travaux publics.

La BANQUE DU CONGO BELGE, puis la BANQUE COMMERCIALE DU CONGO et la BANQUE BELGOLAISE sous leurs différentes appellations ont accompagné depuis le début le développement du Groupe FORREST. Ces dernières années celui-ci s'est fortement impliqué dans des opérations minières au Katanga. Nous pouvons citer les associations entre la GECAMINES et les ENTREPRISES GENERALES MALTA FORREST (EGMF) pour la mise en valeur et l'exploitation du site de Luiswishi et entre la GECAMINES, EGMF et l'UNION MINIERE (UMICORE) pour le projet Kasombo et entre la GECAMINES, le GROUPE FORREST INTERNATIONAL et le Groupe OMG pour le très important investissement (USD 140 millions) communément appelé « Big Hill ».

Nous accompagnons et finançons également le Groupe FORREST dans ses activités d'ensemblier, de cimentier et d'entrepreneur général. Le chiffre d'affaires consolidé du Groupe FORREST dépasse largement les USD 100 millions par an ces dernières années.

Rien ne nous permet de penser ou de dire que le Groupe FORREST n'est pas honorable.

1.2. Les huit pièces faisant l'objet du lot 4 joint au document du 8 mai 2003 de l'Ambassadeur Mahmoud KASSEM

Il s'agit de documents émanants du Comité de Gestion de la joint-venture composée à 50/50 entre la GECAMINES et EGMF pour le projet Luiswishi.

Ce projet est en exploitation depuis 1998 et a produit en moyenne 5.000 tonnes de cobalt et 12.000 tonnes de cuivre par an ces dernières années jusqu'à son arrêt momentané en décembre 2002 suite aux difficultés rencontrées par son acheteur OMG du fait de la déprime des cours du cobalt en 2002.

Le projet fonctionne grâce à une parfaite coopération entre la GECAMINES et EGMF. Il est géré conjointement par les deux sociétés, via un Comité de Gestion.

La GECAMINES et EGMF sont conjointement titulaires d'un compte en nos livres alimenté par les recettes de la vente du cobalt et du cuivre. Nous recevons chaque mois des instructions de paiement signées conjointement par la GECAMINES et EGMF pour payer par le débit de leur compte joint leurs frais de fonctionnement et répartir les marges opérationnelles dégagées par ce projet.

Nous avons numéroté les pièces du lot 4 de a) à h) voir annexes (30 à 37).

Les pièces a), c) et d) du lot 4 sont des documents internes au Comité de Gestion de Luiswishi (GCL en sigle), qui ne nous ont jamais été communiqués et ne nous concernent pas.

En ce qui concerne les pièces b), e), f), g), h) :

- la pièce b) est l'annexe d'un ordre de paiement de USD 500.000 que nous produisons en annexe (38) ;
- la pièce (e) est l'annexe de la pièce (f), ces pièces constituent ensemble un ordre de paiement de USD 422.322,27 ;
- la pièce (g) constitue un ordre de paiement de USD 422.322,27 ;
- la pièce (h) est un duplicata de la pièce (e).

Il s'agit de trois ordres de paiement nous adressés conjointement par la GECAMINES et EGMF et à exécuter par le débit de leur compte joint en nos livres.

Le premier, composé de l'annexe (38) à la présente et de la pièce (b), est une instruction à notre Banque de verser USD 500.000 au compte du GROUPE FORREST INTERNATIONAL AFRIQUE (GFIA) que cette société utilisait pour recevoir les sommes destinées à la Reconstruction Nationale.

Le second, composé de la pièce (f) et de la pièce (e), est une instruction de verser USD 422.322,27 au même compte.

Le troisième, composé de la pièce (g), est une instruction de verser USD 422.322,27 au compte de la société EGMF en nos livres, il ne comporte pas d'annexe car l'ensemble des indications nécessaires figurent dans l'ordre.

Dans le cadre de la contribution de la GECAMINES au budget de l'Etat Congolais et à titre de fiscalité, feu le Président KABILA et son gouvernement avaient décidé d'affecter à un programme de Reconstruction Nationale les royalties sur le gisement (en 1999) puis la marge (en 2000) encaissés par la GECAMINES.

GFIA recueillait dans un compte à son nom en nos livres des sommes destinées à cette Reconstruction Nationale et utilisées par elle à la réalisation de travaux publics pour l'Etat Congolais, tels la construction de routes, l'entretien des voiries, l'installation de marchés etc... qui souvent étaient réalisés à l'intervention d'EGMF soit après appel d'offre soit après désignation parce qu'elle était seule à disposer des moyens techniques et financiers nécessaires à la réalisation du projet.

Ces ordres de transferts nous sont donc apparus comme totalement conformes aux activités et projets de nos clients et sans nature à devoir éveiller aucun soupçon de notre part.

Ils étaient tous les trois instruits de commun accord par la GECAMINES et EGMF puisqu'ils étaient revêtus des signatures conjointes des deux sociétés.

1.3. <u>ORYX NATURAL RESOURCES</u>

En juin 2001, la BANQUE BELGOLAISE a ouvert un compte auprès de sa succursale de Londres et un compte auprès de son siège de Bruxelles au nom d'ORYX NATURAL RESOURCES.

Le compte auprès de la succursale de Londres n'a jamais fonctionné. Seul le compte en dollars USD ouvert au siège de Bruxelles a fonctionné à partir de juin 2001 jusqu'à mi-novembre 2002.

ORYX NATURAL RESOURCES avait pour activité l'exploitation minière de diamant.

Lors de l'entrée en relations les procédures de « compliance » et « know your customer » ont été appliquées.

La BANQUE HAMBROS à Londres nous a confirmé en date du 20 mars 2001 qu'ORYX NATURAL RESOURCES était une « *Properly constituted private company respectably introduced to us in May 1999* » (voir annexe 39).

Les mouvements enregistrés dans le compte d'ORYX NATURAL RESOURCES étaient conformes à l'activité de cette société.

Le transfert de USD 35.000 en faveur d'AVIENT LIMITED effectué au départ de son compte ouvert en nos livres, reproché à ORYX NATURAL RESOURCES au point 55 du Rapport du Groupe d'Experts n'a pas été exécuté en septembre 2001 comme indiqué dans le Rapport du Groupe d'Experts mais bien le 16 juillet 2001. S'agissant d'un paiement effectué en faveur d'une société de transport aérien, ce paiement correspondait à l'activité de la société et notre Banque n'avait aucune raison de le suspecter.

La BANQUE BELGOLAISE n'a remarqué aucune opération effectuée par le compte d'ORYX NATURAL RESOURCES qui n'était pas conforme à son activité habituelle.

Les paiements reprochés à ORYX NATURAL RESOURCES au point 58 du Rapport du Groupe d'Experts en faveur d'un compte en Belgique de la société ABADIAM n'ont pas transité par le compte d'ORYX NATURAL RESOURCES en nos livres.

Après la publication du Rapport final du Groupe d'Experts, rendu public le 21 octobre 2002, la BANQUE BELGOLAISE a fait part à ORYX NATURAL RESOURCES de sa décision de mettre fin à ses relations avec elle, moyennant le préavis d'usage.

1.4. La SOCIETE MINIERE DE BAKWANGA (MIBA)

La SOCIETE MINIERE DE BAKWANGA (MIBA) a été constituée le 13 décembre 1961. Elle a repris les activités minières de la SOCIETE MINIERE DU BECEKA, elle-même créée en 1919.

La SOCIETE MINIERE DU BECEKA a exploité pendant plus de quarante ans les dépôts diamantifères découverts à partir de 1913 au Kasaï Oriental.

La relation de la MIBA avec notre groupe bancaire est donc historique, elle remonte à la création de nos entreprises respectives.

A la suite de l'apport de ses avoirs au Congo à la MIBA, la SOCIETE MINIERE DU BECEKA devint une société belge à portefeuille dont la dénomination devint en 1962 SIBEKA (SOCIETE D'ENTREPRISE ET D'INVESTISSEMENTS DU BECEKA), elle détenait 50 % du capital de la MIBA.

Lors de la zaïrianisation en 1973, l'Etat zaïrois devint propriétaire de la totalité des actions de la MIBA.

Ensuite, en novembre 1977, 20 % du capital de la MIBA fut rétrocédé à la SIBEKA.

La SIBEKA est depuis associée à la gestion de la MIBA via un Administrateur Délégué Général nommé par le Conseil d'Administration de la MIBA sur proposition de SIBEKA. Celui-ci assiste le Président Administrateur Délégué (PAD) choisi par le Conseil d'Administration de la MIBA parmi les cinq membres du Conseil d'Administration représentant la République Démocratique du Congo.

La MIBA emploie près de 6.000 personnes à Mbuji Mayi et dispose d'un bureau de représentation à Johannesburg et à Bruxelles. La production annuelle de la MIBA tourne, ces deux dernières années, autour de 5.500.000 à 6.000.000 de carats pour un chiffre d'affaires de USD 65.000.000 à USD 75.000.000.

La MIBA est titulaire de comptes dans les livres de la BANQUE BELGOLAISE et bénéficie d'avances ponctuelles sur base de sa production.

1.5. <u>Les deux pièces faisant l'objet du lot 2 joint au document du 8 mai 2003 de l'Ambassadeur Mahmoud KASSEM</u>

La première pièce est une instruction qui nous a été adressée par la MIBA et qui a été exécutée le 24 novembre 1999 par le débit du compte de la MIBA en nos livres.

Il s'agit d'un ordre de paiement d'une somme de USD 1.500.000 en faveur d'un compte de la BANQUE CENTRALE DU CONGO auprès de l'UNION DE BANQUE SUISSE à Zürich, sous la mention « paiement acompte fiscal 11/1999 ».

La MIBA ayant des activités commerciales est redevable d'impôts à l'Etat congolais. Elle règle ses impôts à chaque exportation d'un lot de diamants.

La BANQUE CENTRALE DU CONGO, en tant que banque centrale, est titulaire de comptes dans différents pays étrangers.

Selon les besoins et les accords convenus avec la BANQUE CENTRALE DU CONGO, la MIBA règle ses impôts à l'un ou l'autre compte de la BANQUE CENTRALE DU CONGO.

Ce paiement n'était donc pas de nature à éveiller quelque soupçon que ce soit de notre part.

La seconde pièce est un document interne à la MIBA dont notre Banque n'a jamais eu connaissance et qui ne concerne en rien notre Banque.

Il semble s'agir d'une instruction adressée par le Représentant de la MIBA à Kinshasa à la Direction Générale et Financière à Mbuji Mayi. Le document n'est toutefois ni daté, ni signé et rien ne permet d'identifier l'opération sous-jacente.

L'association de ces deux documents est équivoque car elle tend à faire croire que le premier est le support du second.

1.6. La pièce de deux pages faisant l'objet du lot 3 joint au document du 8 mai 2003 de l'Ambassadeur Mahmoud KASSEM

Il s'agit d'une lettre adressée le 28 juin 2001 par le Ministre Délégué à la Présidence de la République, Monsieur Augustin KATUMBA MWANKE au Président Administrateur Délégué (PAD) de la MIBA.

Notre Banque n'a jamais eu connaissance de ce document qui ne nous est pas adressé et ne nous concerne pas.

Aucun des trois paiements mentionnés dans ce document n'a été exécuté par le débit du compte de la MIBA en nos livres.

Les deux premiers paiements sont d'ailleurs destinés à des comptes ouverts chez d'autres banquiers et à des destinataires que nous ne connaissons pas. Seul le troisième paiement est à destination d'une société titulaire d'un compte en nos livres, DEMIMPEX.

DEMIMPEX est une société de droit belge créée en 1991 et cliente de notre Banque depuis cette date.

DEMIMPEX livre des véhicules de toutes les grandes marques automobiles ainsi que du matériel minier, des engins de chantier et des pièces de rechange sur le marché de l'exportation à destination des cinq continents.

Les grandes sociétés minières du Congo, GECAMINES et MIBA, sont des clients traditionnels de DEMIMPEX.

2. *Deuxième grief :*

« ... through a network of correspondent banks, BELGOLAISE BANK facilitates financial transactions for the elite networks of Uganda and Rwanda that are also engaged in the exploitation of natural resources and other forms of wealth of the RDC.

BELGOLAISE, among at least two other internationally operating banks, had a relationship with BANQUE INTERNATIONALE DE CREDIT (BIC) through BIC offices located in Butembo and Beni (northeastern) DRC.

The Panel learned that members, companies and associates of the Ugandan elite network (as identified in the Panel's Report of 16 October 2002) had used BIC to concentrate the wealth they had obtained through their commercial activities involving the exploitation of natural resources of the DRC. »

2.1. Les banquiers correspondants de la BANQUE BELGOLAISE

Comme toutes les banques, la BANQUE BELGOLAISE entretient des relations avec des banquiers correspondants. Il s'agit de banquiers oeuvrant dans d'autres pays avec lesquels notre Banque entretient des contacts pour le besoin des ordres à exécuter pour notre compte et pour compte de notre clientèle.

Notre Banque dément formellement avoir jamais utilisé ses relations avec des banquiers correspondants pour faciliter les transactions de *« the elite networks of Uganda and Rwanda »*. Ces correspondants ont exclusivement été utilisés pour le besoin des opérations à effectuer pour le compte de notre Banque et de nos clients.

Notre Banque ne peut en rien être tenue pour responsable des rapports qui pourraient être reprochés à ces banques avec des clients qui leur sont propres.

2.2. <u>Les relations de la BANQUE BELGOLAISE avec la BANQUE INTERNATIONALE DE CREDIT (BIC)</u>

La BANQUE INTERNATIONALE DE CREDIT (BIC) a été créée en 1993 et s'est ouverte au public l'année suivante. Son capital est entièrement congolais.

Ses banquiers principaux sont, comme elle l'indique elle-même dans ses publicités, la BARCLAY'S BANK et l'ABN AMRO BANK.

La BANQUE BELGOLAISE, de par son activité, est naturellement entrée en relation avec la BIC à partir de 1998.

C'est en novembre 2001 que la BIC a demandé l'ouverture d'un compte en nos livres. Les contacts concernant ce compte se déroulent exclusivement avec le siège de la BIC à Kinshasa.

Pour les agences de l'est du Congo, les interventions de la BANQUE BELGOLAISE ont consisté entre 1998 et 2002 ponctuellement dans l'ouverture ou la confirmation de crédits documentaires et la négociation de ceux-ci, concernant majoritairement de l'exportation de café et exceptionnellement de bois par et en faveur de sociétés actives dans ces marchés. Les contacts concernant ces crédits documentaires se sont également déroulés exclusivement avec le siège de la BIC à Kinshasa. Notre devoir de discrétion professionnelle ne nous permet pas de fournir des détails sur ces opérations sans l'accord des sociétés intéressées.

Ces relations n'étaient pas de nature à éveiller les soupçons de la BANQUE BELGOLAISE.

Nous tenons à attirer l'attention sur le fait que la BIC ne figure pas dans le Rapport du Groupe d'Experts, ni dans ses annexes.

Notre Banque ne peut en rien être tenue pour responsable des rapports qui pourraient être reprochés à la BIC avec des clients qui lui sont propres.

3. <u>Troisième grief</u> :

« Moreover, the Rwandan elite network (as identified in the Panel's Report of 16 October 2002) uses the banks operating in the Kivu's that have a relationship with the BANQUE DE KIGALI in which the BELGOLAISE is a major shareholder. »

La BANQUE DE KIGALI

La BANQUE BELGOLAISE est actionnaire à concurrence de 50 % de la BANQUE DE KIGALI.

La BANQUE DE KIGALI n'entretient aucune relation avec des banques ou succursales bancaires établies au Kivu, autres que les succursales de la BANQUE COMMERCIALE DU CONGO.

Les relations de la BANQUE DE KIGALI avec les succursales de la BANQUE COMMERCIALE DU CONGO au Kivu sont purement des relations de banquier correspondant, la BANQUE DE KIGALI ne s'immisçant nullement dans la gestion de celles-ci.

A notre connaissance, les succursales au Kivu de la BANQUE COMMERCIALE DU CONGO n'ont pas été utilisées par l'élite rwandaise, les clients de ces succursales étant composés des clients locaux traditionnels de la BANQUE COMMERCIALE DU CONGO d'avant 1998 et d'organisations non gouvernementales.

4. *Quatrième grief :*

Le quatrième grief n'est pas formulé dans le corps du document du 8 mai 2003 de l'Ambassadeur Mahmoud KASSEM mais est constitué de la pièce jointe à celui-ci faisant l'objet du lot 1.

La pièce faisant l'objet du lot 1 joint au document du 8 mai 2003 de l'Ambassadeur Mahmoud KASSEM

Il s'agit d'un avis de crédit par notre Banque des sommes de BEF 1.919.281 et BEF 259.560 au compte de la BANQUE COMMERCIALE DU RWANDA à Kigali, via son correspondant la BANQUE BRUXELLES LAMBERT, pour le compte de COMIEX.

Ces paiements concernent deux crédits documentaires ouverts par notre Banque en mars 1997.

La somme de BEF 1.919.281 concerne le crédit documentaire n° 7523 ouvert d'ordre d'ENZYMASE en faveur d'ENRA en couverture de l'exportation par celle-ci de papaïne.

La somme de BEF 259.560 concerne le crédit documentaire n° 7525 ouvert d'ordre de BUDIMEX en faveur d'ENRA en couverture de l'exportation par celle-ci de café.

Les trois sociétés appartiennent au Groupe de Monsieur BEMBA SAOLONA et sont clientes de longue date de notre Banque.

ENRA est une société de droit congolais, productrice de café, papaïne et bois. ENZYMASE est une société de droit belge, spécialisée dans la commercialisation de la papaïne et BUDIMEX était une société de droit belge spécialisée dans la commercialisation du café. BUDIMEX est en liquidation depuis 1999 suite aux conflits de 1997 et 1998 et à la chute des prix du café.

Ces crédits documentaires étaient donc conformes aux activités des sociétés concernées.

Nos clients nous ont donné instruction d'effectuer les paiements en faveur de COMIEX selon des accords qu'ils avaient convenus. COMIEX n'est pas cliente de notre Banque et, à l'époque (mars 1997), nous n'avions aucune information négative concernant COMIEX. Nous n'avions donc aucune raison de ne pas exécuter les instructions de nos clients.

VI. Conclusion

Comme indiqué ci-dessus en point V.A), aucun grief n'a jamais été formulé à l'égard de FORTIS BANQUE, ni dans le Rapport du Groupe d'Experts, ni dans le document du 8 mai 2003 et les pièces jointes à celui-ci, ni au cours des réunions que nos représentants ont eues avec le Groupe d'Experts respectivement à New York et à Nairobi.

En ce qui concerne la BANQUE BELGOLAISE, les griefs allégués consistent dans la mention de la BANQUE BELGOLAISE au point 55 du Rapport des Experts et dans le document de l'Ambassadeur Mahmoud KASSEM du 8 mai 2003 accompagné de treize pièces subdivisées en quatre lots. Il a été démontré de façon détaillée ci-avant que ces griefs, qui n'étaient étayés d'aucune preuve, sont inconsistants et sans fondement.

Par conséquent, c'est à tort que FORTIS BANQUE et la BANQUE BELGOLAISE sont mentionnées dans l'annexe III du Rapport du Groupe d'Experts de l'O.N.U. sur l'Exploitation Illégale des Ressources Naturelles et autres Formes de Richesses en République Démocratique du Congo comprenant la liste des entreprises considérées par le Groupe d'Experts comme ayant violé les principes directeurs de l'O.C.D.E.

FORTIS BANQUE et la BANQUE BELGOLAISE sollicitent donc avec insistance d'être radiées de cette liste. FORTIS BANQUE et la BANQUE BELGOLAISE insistent également pour que cette radiation soit accompagnée d'un commentaire motivé réhabilitant leur honneur et leur réputation auprès de leurs collaborateurs, leurs clients, leurs actionnaires, leurs concurrents, l'ensemble de leur milieu professionnel et la presse belge.

Enfin, toujours dans le même souci, FORTIS BANQUE et la BANQUE BELGOLAISE sollicitent la publication intégrale du présent Memorandum et de ses annexes, en annexe au Rapport du Groupe d'Experts, en application du point 11 de la Résolution 1457 (2003) du 24 janvier 2003 du Conseil de Sécurité de l'O.N.U.

Bruxelles, le 22 mai 2003

Pour FORTIS BANQUE et la BANQUE BELGOLAISE

D. CUYLITS Président du Comité de Direction de la BANQUE BELGOLAISE	M.Y. BLANPAIN Président du Conseil d'Administration de la BANQUE BELGOLAISE

INVENTAIRE DES ANNEXES

(1) Procuration de FORTIS BANQUE en faveur de la BANQUE BELGOLAISE.
(2) Notre courrier du 25 octobre 2002 à Monsieur KOFI A. ANNAN.
(3) Le courrier nous adressé le 19 novembre 2002 par l'Ambassadeur Mahmoud KASSEM.
(4) Notre courrier du 26 novembre 2002 adressé à l'Ambassadeur Mahmoud KASSEM.
(5) Notre courrier du 3 février 2003 adressé à l'Ambassadeur Mahmoud KASSEM.
(6) L'e-mail nous adressé le 25 février 2003 par le Cabinet de Madame Annemie NEYTS.
(7) La synthèse de l'intervention de Monsieur Marc Yves BLANPAIN devant le Groupe d'Experts le vendredi 7 mars 2003 à New York.
(8) Notre courrier du 13 mars 2003 adressé à l'Ambassadeur Mahmoud KASSEM.
(9) Le fax nous adressé le 2 avril 2003 par Monsieur Pall DAVIDSSON nous transmettant la note du Président du Conseil de Sécurité de l'O.N.U. du 24 mars 2003.
(10) Notre e-mail adressé le 8 avril 2003 à Monsieur Pall DAVIDSSON.
(11) Le fax nous adressé le 9 avril 2003 par l'Ambassadeur Mahmoud KASSEM nous transmettant son courrier du même jour.
(12) Notre e-mail adressé le 14 avril 2003 à Monsieur Pall DAVIDSSON.
(13) L'e-mail nous adressé le 15 avril 2003 par Monsieur Pall DAVIDSSON.
(14) L'e-mail nous adressé le 21 avril 2003 par Monsieur Pall DAVIDSSON.
(15) Notre e-mail adressé le 23 avril 2003 à Monsieur Pall DAVIDSSON.
(16) Le procès-verbal dressé par nos représentants de la réunion tenue entre eux et Messieurs Bruno SCHIEMSKY, Christian DIETRICH et Pall DAVIDSSON le 8 mai 2003 à Nairobi.
(17) Le procès-verbal dressé par nos représentants de la réunion tenue entre eux et l'Ambassadeur Mahmoud KASSEM assisté de Madame Hannah TAYLOR le 8 mai 2003 à Nairobi.
(18) La Charte contenant les principes de compliance de la BANQUE BELGOLAISE.
(19) Le Code de déontologie adressé aux dirigeants du réseau de la BANQUE BELGOLAISE.
(20) Le descriptif de la fonction du Compliance Officer.
(21) La procédure d'entrée en relation commerciale de la BANQUE BELGOLAISE.
(22) La procédure d'examen a posteriori des mouvements en compte des clients.
(23) La procédure de dénonciation des opérations suspectes auprès de la CETIF.

(24 à 28) Des extraits des brochures « Rapports et Bilans » de la BANQUE COMMERCIALE DU CONGO des exercices 1998 à 2002.

(29) Le document du 8 mai 2003 signé par l'Ambassadeur Mahmoud KASSEM reprenant les griefs formulés par le Groupe d'Experts à l'égard de FORTIS BANQUE et de la BANQUE BELGOLAISE accompagné de treize pièces subdivisées en quatre lots.

(30 à 37) Les pièces faisant l'objet du lot 4 joint au document du 8 mai 2003 de l'Ambassadeur Mahmoud KASSEM renumérotées de a) à h).

(38) L'ordre de paiement de USD 500.000 nous adressé conjointement par la GECAMINES et EGMF.

(39) La lettre de recommandation d'ORYX NATURAL RESOURCES par la BANQUE HAMBROS du 20 mars 2001.

TABLE DES MATIERES



PROCURATION

FORTIS BANQUE, société anonyme ayant son siège social Montagne du Parc, 3 à 1000 Bruxelles

ici représentée par :

- Monsieur Filip DIERCKX, Administrateur Délégué de FORTIS BANQUE et
- Monsieur Michel CLERCKX, Secrétaire Général de FORTIS BANQUE

confirme par la présente avoir donné tous pouvoirs à la BANQUE BELGOLAISE, société anonyme ayant son siège social Canstersteen, 1 à 1000 Bruxelles

aux fins de la représenter dans toutes les démarches utiles et nécessaires auprès du Secrétaire Général de l'O.N.U., du Groupe d'Experts de l'O.N.U. sur l'exploitation illégale des ressources naturelles et d'autres formes de richesses de la République Démocratique du Congo, ainsi que de toute autre instance de l'O.N.U., pour connaître les raisons qui ont motivé la mention de FORTIS BANQUE dans l'annexe III du Rapport du Groupe d'Experts de l'O.N.U. sur l'exploitation illégale des ressources naturelles et autres formes de richesses en République Démocratique du Congo comprenant la liste des entreprises considérées par le Groupe d'Experts comme ayant violé les principes directeurs de l'O.C.D.E., défendre l'honneur et la réputation de FORTIS BANQUE et faire tout ce qui sera utile et nécessaire pour obtenir la radiation de FORTIS BANQUE et de la BANQUE BELGOLAISE de cette liste,

déclarant dès à présent reconnaître et ratifier tout ce qui a été et sera fait par la BANQUE BELGOLAISE en son nom.

Ainsi fait à Bruxelles, le 16 mai 2003.

M. Clerckx,
Secrétaire Général
FORTIS BANQUE

F. Dierckx,
Administrateur Délégué
FORTIS BANQUE

GEORGE A. FORREST

Reaction No. 24

Monsieur l'Ambassadeur Kassem
Président du Panel d'Experts de
l'ONU

Bruxelles, le 28 mai 2003

Excellence,
Monsieur l'Ambassadeur,
Monsieur le Président,

Permettez-moi tout d'abord de vous remercier, en mon nom personnel et celui du GROUPE FORREST, pour les entretiens constructifs que nous avons eus ces 20 et 21 mai dernier avec le Panel des Experts des Nations Unies au sujet du Rapport Final, publié le 16 octobre 2002.

Au cours des premières discussions que nous avons eues, les 5, 20 et 21 mai 2003, avec votre Panel, nous avons eu l'occasion de passer en revue et d'expliquer nos activités industrielles et commerciales, ainsi que les règles de comportement que nous appliquons à la lumière de toutes les allégations, peu en importe l'origine, dont le Rapport a fait état à notre égard.

Le GROUPE FORREST, avec des activités commerciales notamment en Afrique et en Europe, a ainsi démontré qu'il a toujours appliqué les Directives OCDE pour les entreprises multinationales et il a confirmé au Panel qu'il continuera à le faire.

Ces Directives reflètent en effet les principes internes au GROUPE FORREST de bonne gouvernance et d'éthique commerciale.

GEORGE A. FORREST

Le GROUPE FORREST s'est également déclaré disposé à mettre en place des procédures de consultation régulière avec l'OCDE et avec le point de contact national belge, ce que je confirme à nouveau bien volontiers.

Nous avons par ailleurs soumis un ensemble d'éléments au Panel, en réponse aux questions soulevées dans son dernier Rapport. De plus, le GROUPE FORREST s'engage à travailler avec le Panel afin de régler les différends ou points de discussion pouvant surgir pendant le restant de son mandat.

Après une discussion approfondie des éléments actuels et après avoir répondu à toutes les questions posées par votre Panel à ce sujet, nous sommes convaincus que votre Panel arrivera à la conclusion que les appréciations exprimées dans le Rapport à notre sujet se fondent sur un dossier qui restait à parfaire et qui, une fois complété et remis dans son contexte, conduit à la conclusion que nous devons être innocentés de l'ensemble des accusations, reprises dans le Rapport final du 16 octobre 2002.

Cette conclusion s'impose d'autant plus que moi-même et le GROUPE FORREST avons toujours œuvré pour une transparence optimale de l'ensemble de nos opérations industrielles et commerciales.

Comme tout groupe de sociétés qui se respecte, nous avons mis en place et nous appliquons des procédures adéquates qui permettent d'éviter des actes contestables ou préjudiciable de la part de nos représentants et employés.

Je reconnais, et le GROUPE FORREST le fait également, que la bonne gouvernance requiert un examen approfondi de toute nouvelle allégation éventuelle, une publication des résultats de cet examen dans les limites autorisées par la loi et, s'il échet, l'adoption de mesures appropriées afin d'améliorer le fonctionnement du GROUPE FORREST.

Nous confirmons également que nous avons mis en place des mesures spécifiques pour prévenir toute forme de corruption ou autre acte préjudiciable au sein de notre groupe et de promouvoir, suivant les standards applicables, la transparence de ses activités. Ces mesures seront maintenues et renforcées.

Nous confirmons encore que nous coopérons à cet égard activement dans un esprit constructif avec votre Panel.

GEORGE A. FORREST

Eu égard aux éléments que nous vous avons soumis, aux réponses que nous avons données à l'ensemble des questions posées et à la bonne volonté avec laquelle nous proposons et acceptons, comme par le passé, de collaborer activement et de façon constructive avec l'OCDE, votre Panel ou toute instance internationale soucieuse de la bonne gouvernance, d'éthique industrielle et commerciale et de transparence des opérations, moi-même, le GROUPE FORREST et les sociétés affiliées visées par le Rapport
demandons au Conseil de Sécurité de retirer nos noms dudit Rapport et de toutes ses annexes (S/2002/1146).

Veuillez croire, Excellence, Monsieur l'Ambassadeur, Monsieur le Président, à mes sentiments les plus respectueux.

George A FORREST

Reaction No. 25

THE DRC REPORTS

By request of the President of the UN Security Council (S/PRST/2000/20, S/PRST/2001/13, S/PRST/2001/39):

1. Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo, dated 12 April 2001.

2. Addendum to the report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo, dated 10 November 2001.

3. Final report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo, dated 15 October 2002.

Reference: Security Council Resolution 1457 (2003)

Final Response to the UN Security Council re the Findings and Recommendations arising in the above DRC Reports

by

Tremalt Limited

Kababankola Mining Company S.p.r.l.

Mr John Bredenkamp

May, 2003

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FINAL RESPONSE

1. INTRODUCTION

1.1 Following open dialogue and close and helpful co-operation between the Panel and the parties named below, which it is intended will be ongoing, this document is now submitted as the final response of the Kababankola Mining Company S.p.r.l., Tremalt Limited, and John Arnold Bredenkamp (the "Tremalt Parties"), to the various Reports (the "Reports") of each of the "Panels of Experts on the Illegal Exploitation of the Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo" i.e.

- The Report dated 12th April 2001 (the "First Report")
- The second Report dated 2nd November 2001 (the "Addendum")
- The Report dated 15th October 2002 (the "Final Report")

1.2 This final response is submitted to the Panel pursuant to paragraphs 9, 10, 11 and 12 of Security Council Resolution 1457(2003) in which the Security Council :

"*9. Stresses that the new mandate of the Panel should include :*

- *Further review of relevant data and analysis of information previously gathered by the Panel, as well as any new information, including specifically material provided by individuals and entities named in the previous reports of the Panel, in order to verify, reinforce and, where necessary, update the Panel's findings, and/or clear parties named in the Panel's previous reports, with a view to adjusting accordingly the lists attached to those reports*
- *An assessment of the actions taken by all those named in the reports in respect of paragraphs 12 and 15 below.*

10. Requests the Chairman of the Panel to brief the Council on any progress towards the cessation of the plundering of the natural resources of the Democratic Republic of the Congo three months after the resumption of the Panel's work.

11. Invites, in the interests of transparency, individuals, companies and States, which have been named in the Panel's last report to send their reactions, with due regard to commercial confidentiality, to the Secretariat, no later than 31st March 2003 (later changed to 31st May 2003) and requests the Secretary General to arrange for the publication of those reactions, upon request by individuals, companies and States named in the report of 15th October 2002...

12. Stresses the importance of dialogue between the Panel, individuals, companies and States and requests in this regard that the Panel provide to the individuals, companies and States named, upon request, all information and documentation

connecting them to the illegal exploitation of the Democratic Republic of the Congo's natural resources ... subject to the Panel's duty to preserve the safety of its sources..."

1.3 The mandate of the Panel, as referred to in the preceding paragraphs, includes a review and verification of allegations contained in the First Report, the Addendum and the Final Report. Security Council Resolution 1457(2003), however, goes one step further and stresses that the new mandate of the Panel should include :

"*9. – recommendations on measures a transitional Government in the Democratic Republic of the Congo and other Governments in the region could take to develop and enhance their policies, legal framework and administrative capacity to ensure the resources of the Democratic Republic of the Congo are exploited legally and on a fair commercial basis to benefit the Congolese people*"

1.4 This final response of the Tremalt Parties accordingly serves two purposes :

- In the first instance it summarises the steps taken by the Tremalt Parties to respond to the incorrect allegations contained in the First Report, the Addendum and the Final Report; and
- In the second instance it categorises the steps taken, or to be taken, by the Tremalt Parties, in order to ensure that, pursuant to Security Council Resolution 1457(2003), the resources of the DRC are, as regards the KMC Joint Venture, exploited legally and on a fair commercial basis to benefit the Congolese people.

1.5 The allegations contained in the First Report, the Addendum and the Final Report, were, in the main, reported as factual, and were presented as evidence of the "Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo". The Tremalt Parties, however, contend that the majority of the factual allegations made in relation to them are either unsubstantiated, or have been presented in an inaccurate or misleading fashion. It is important that the previous damaging effect of these allegations is recognised and the balance redressed by this correcting final response and the other information and documentation provided to the Panel.

2. CO-OPERATION WITH UN PANELS

2.1 The First Report covered the period 1995/2000. Tremalt was only incorporated in October 2000 and KMC on 31st January 2001. Prior to that period neither of these companies, nor any of the shareholders, had any involvement in the DRC. In the circumstances none of the Tremalt Parties could have had, or did have, any role in the exploitation or plundering of the mineral and forest resources of the DRC, illegal or otherwise, in the period 1995 to 2000.

2.2 With regard to the Addendum, and the Final Report, the following meetings and/or steps were taken by the Tremalt Parties to co-operate with the Panel :

- Meetings of senior KMC executives were held with Panel members in July and September 2001

- A presentation was made to the Panel by a senior KMC management team in Nairobi, on 6th August 2002

- A full written response, enclosing copious documentation, was lodged with the Panel in reply to further written questions from the Panel dated 22nd August 2002

- A meeting between KMC representatives and the Panel, was held on 16th April 2003 in Nairobi

- A substantial written initial response, together with supporting documentation was submitted, by the Tremalt Parties, to the Panel, on Wednesday 14th May 2003

- A further meeting between KMC representatives and the Panel was held, in Nairobi, on Thursday 15th May 2003 in order to fully and comprehensively address the allegations in the Reports, the interim response, the supporting documentation, and any other areas of concern of the Panel

2.3 At the meetings of August 2002, April 2003, and May 2003, the Tremalt Parties, in order to ensure complete transparency, adopted the following statement of policy :

"*Statement of Policy*
KMC, Tremalt and John Bredenkamp reiterate the statement of policy announced at their previous meeting with the Panel on April 16th 2003, i.e. it is their intention to engage in a process of open dialogue with the Panel in order to achieve complete transparency in respect of all matters pertaining to :

- *The circumstances in which Tremalt invested in KMC*
- *The contractual and legal documents underpinning the KMC Joint Venture*
- *The current and future operations of KMC*
- *The financial arrangements concerning the KMC Joint Venture*
- *The direct and indirect ownership interests in Tremalt*

In return these parties believe that pursuant to the provisions of Security Council resolution 1457(2003) the Panel should clear them of all allegations of wrong doing in respect of their involvement in the DRC, and the investment in the KMC joint venture."

2.4 Pursuant to this Statement of Policy, and at the meetings referred to above, the Tremalt Parties provided to the Panel substantive information and documentation pertaining to :

- The nature of the relationships between John Bredenkamp, Tremalt and the Governments of Zimbabwe and the DRC

- The circumstances in which Tremalt invested in KMC

- The conclusion of the contractual and legal documents underpinning the KMC Joint Venture
- The current and future operations of KMC
- The financial arrangements concerning the KMC Joint Venture
- The direct and indirect ownership interests in Tremalt
- The activities of ACS and Raceview Enterprises (Pvt) Limited
- The role of Wespoch
- EU sanctions

2.5 The information and documentation referred to above included :

- Access to all KMC Legal Contracts, Mining Convention, Addenda and Presidential Decrees
- Financial Statements in respect of KMC for the years 2001 and 2002
- Full details of all exports and sales of product by KMC in 2001 and 2002
- Full details of operational matters relating to KMC
- Access to a 25 year mining plan relating to the development of the KMC concessions
- Copies of the Raceview Supply Contracts
- Copies of Raceview and ACS summaries of orders
- Copies of the Wespoch minutes and other corporate documents
- Full details of the involvement of the Zimbabwean Government, and the Government of the DRC, (following on the 1998 Inter Governmental Accord between those countries), in the negotiations leading up to, and the conclusion of, the KMC Joint Venture

2.6 Prior to the meeting of 16th April 2003 the Panel were requested, pursuant to paragraph 12 of Security Council Resolution 1457(2003), to provide details of any information, and copies of any documentation, pertinent to the allegations relating to the Tremalt Parties as raised in the Panel's previous Reports. The Panel accordingly provided certain documentation which it requested the Tremalt Parties to address at the meeting of Thursday 15th May 2003. Certain other information and documentation was withheld by the Panel on the grounds of confidentiality, although any areas of concern or enquiry raised in that information and documentation were addressed by the Tremalt Parties to the apparent satisfaction of the Panel.

2.7 At the meeting with the Panel on 15th May 2003, all of the documents handed by the Panel to the Tremalt Parties were addressed in considerable detail, as also the documentation provided by the Tremalt Parties to the Panel. The Panel was also invited by the Tremalt Parties to raise any other areas of concern or enquiry in relation to the activities of the Tremalt Parties in respect of the KMC Joint Venture, or in the DRC generally. All queries raised by the Panel were fully and comprehensively responded to by the Tremalt Parties and their representatives. The Panel thereafter confirmed that there were no further issues requiring their consideration.

3. NO ILLEGAL EXPLOITATION BY TREMALT PARTIES

3.1 The Tremalt Parties submit that the dialogue established between these parties, and the Panel, together with the voluminous information and documentation provided to the Panel, have had the consequence that a number of the inaccuracies and misleading statements contained particularly in the Addendum, and the Final Report, have now been corrected and resolved to the satisfaction of the Panel. The Tremalt Parties have reiterated to the Panel that their statement of policy with regard to transparency will extend to any further enquiries of this Panel, or its successor, or any Government commission established by the DRC in consequence of the Panel's findings.

3.2 **Following on the full and frank dialogue between the Tremalt Parties, and the Panel, and the correction of the inaccuracies and misleading statements contained in the Reports, the Tremalt Parties further submit that :**

- **there has been no illegal exploitation, or plundering, of the natural resources of the DRC by the Tremalt Parties, or any other companies or individuals associated with them**
- **there has been no breach of UK/EU sanctions by the Tremalt Parties or any companies or individuals associated with them**
- **the negotiation of the KMC Joint Venture Agreement, the Mining Convention, the Addenda and the promulgation of the Presidential Decrees relating thereto, fully complied with the law of the DRC**
- **the role of the Zimbabwean and DRC Governments in the conclusion of the KMC Joint Venture was consistent with the provisions of the 1998 Inter Governmental Accord between those two parties**
- **The KMC Joint Venture Agreement and the Mining Convention were both entered into on a fair commercial basis to the benefit of the Congolese people (see para 4 below)**

4. **KMC JOINT VENTURE**

4.1 **KMC Joint Venture – Legal and Fair**

4.1.1 In all of their submissions, both oral and in writing to the Panel, the Tremalt Parties provided considerable detail of the legal and commercial terms of the KMC Joint Venture Agreement and the Mining Convention. The Tremalt Parties believe that the Panel will, in so far as it is mandated to do so, find that the KMC Joint Venture has been entered into legally and on a fair commercial basis, to the benefit of the Congolese people.

4.1.2 The Tremalt Parties also believe that this is the view of the Government of the DRC. They reach this conclusion for two reasons :

(a) following on the passing of Security Council Resolution 1457(2003) the Attorney General of the DRC instituted an investigation into a number of matters including the conclusion and implementation of the KMC Joint Venture. The Tremalt Parties co-operated fully and frankly with the Attorney General and submitted to the Attorney General of the DRC copious information and documentation pertinent to the KMC Joint Venture. No adverse finding has been communicated by the Attorney General of the DRC to the Tremalt Parties in respect of this investigation;

(b) the Government of the DRC has, in consequence of the mandate of the Expert Panel, already fully reviewed the KMC Joint Venture, and addressed a Memorandum, in writing, to the Panel, in which it gives a full and complete clearance of the KMC Joint Venture (see 4.1.3 below).

4.1.3 In amplification of the above statement, the Tremalt Parties refer to the Memorandum of September 2002 filed by the Government of the DRC with the Panel. In that Memorandum the Government concludes that :

(a) **the KMC Joint Venture is consistent with the Gecamines policy of entering into joint venture contracts;**

(b) **after full and due consideration of all relevant factors Gecamines was authorised by the Government of the DRC to enter into the KMC Joint Venture with Tremalt;**

(c) **the KMC Joint Venture Agreement and the Mining Convention, were entered into in accordance with Congolese laws;**

(d) **all activities of the KMC Joint Venture, as regards production and exports, have, since inception of the Joint**

Venture, been lawful and in accordance with the current legal and regulatory procedures in effect in the DRC;

4.1.4 In the circumstances the Tremalt Parties, and their associated companies submit that the Panel should clear them of any allegations of illegal or unlawful conduct in respect of the conclusion or implementation of the KMC Joint Venture.

5. TREMALT PARTY UNDERTAKINGS

5.1 Notwithstanding the conclusions reached by the Government of the DRC in its Memorandum to the Panel, of September 2002, the Tremalt Parties, at the meeting of Thursday 15th May 2003, made the following unequivocal undertakings to the Panel, to the DRC Government, and to the KMC joint venture partner Gecamines, i.e. Tremalt undertook to :

- **co-operate fully with any further DRC commission or institution that is established in order to review contracts relating to the exploitation of natural resources in the DRC, including the KMC Joint Venture**
- **renegotiate the terms of the KMC Joint Venture, or Mining Convention, in the event that any such commission or institution reaches the conclusion that any element of the KMC Joint Venture Agreement or of the Mining Convention, as amended, is not transparent, or legal, or commercially fair**
- **sell its interests in the KMC Joint Venture to Gecamines, at the verified cost of Tremalt's involvement in the KMC project, from the date of commencement of the Joint Venture Agreement, to the date of Tremalt's sale of its shareholding interest in KMC to Gecamines, in the event that the renegotiated Joint Venture Agreement, or Mining Convention, offers a return to Tremalt that is unacceptable bearing in mind the risk reward ratio**
- **ensure complete financial transparency, during the life of the KMC Joint Venture Agreement, as regards the Panel, the Government of the DRC and its joint venture partner Gecamines**
- **co-operate with the Panel, and/or the DRC Government in satisfying such bodies that the equity interests in Tremalt, and its holding companies, are transparent and restricted to the Bredenkamp family, with no third party involvement.**

5.2 The Panel, at the meeting of 15th May 2003 also encouraged the Tremalt Parties to set out their views on the future of the KMC Joint Venture.

6. THE FUTURE OF THE KMC JOINT VENTURE

- **The Tremalt Parties entered into the KMC Joint Venture as a long term project. Tremalt has every intention of abiding by its commitments under the Joint Venture**

Agreement, and the Mining Convention, to the ultimate benefit of not only the joint venture itself, but also the Congolese people.

- The Tremalt Parties have noted and concur with the concerns of the Panel, and the United Nations, at the large scale looting, plundering and other illegal exploitation by others of the natural resources of the DRC.

- Tremalt, and the other Tremalt Parties, commit themselves to a continuing policy of good corporate governance and ethical business guidelines in their management of the KMC Joint Venture.

- Existing company procedures will be regularly reviewed. Measures will be implemented, and guidelines issued, with a view to ensuring that all parties associated with the KMC Joint Venture, including employees and outside contractors, adhere to these business ethics and these guidelines.

- The Tremalt Parties recognise the importance of maintaining a close working relationship and continuing dialogue with government and the international community in order to identify and resolve any problems or issues which may arise in the future in relation to the KMC Joint Venture or in the DRC generally.

- Tremalt also undertakes to observe the OECD guidelines in respect of its investment in, and management of, KMC and will co-operate fully, at all times, with the OECD national contact point responsible for Tremalt's observance of the OECD guidelines.

7. CONCLUSIONS

7.1 The Tremalt Parties submit that in the light of :

- their full co-operation with the Panel
- their full and frank disclosure of information and documentation
- the legality of the KMC Joint Venture
- their undertakings as to transparency
- their undertakings as to the future of the KMC Joint Venture
- their undertaking to observe OECD guidelines

they should be given a full clearance in respect of their activities in the DRC and should be removed from the list of any companies or individuals in respect of which sanctions are recommended by the Panel or the Security Council.

May 2003



Reaction No. 26

6 June 2003

His Excellency Ambassador Mahmoud Kassem
Chairman
United Nations Expert Panel on the Exploitation of Natural Resources of the Democratic Republic of Congo
PO Box 30302
00100 Nairobi
Kenya

Your Excellency,

Final Submission to the Panel Pursuant to Resolution 1457 (2003)

Thank you for your letter of 4 June. I understand your concern that we should refer to paragraph nine of Resolution 1457 and our submission has been amended accordingly.

It has also been amended to make clear that the Panel is making recommendations to the Security Council to remove Oryx's and Mr Al-Shanfari's names from the lists (although it does seem to me that paragraph nine obliges the Panel, not the Security Council, to make such decisions).

However this seems to me to be merely a procedural issue which is why we are happy to accommodate your concern.

Please, Your Excellency, accept my best personal regards.

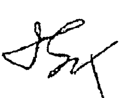
Yours Sincerely,

[signature]

Dr. Issa G. Al-Kawari

Final Submission, pursuant to paragraph 11 of Security Council Resolution 1457 (2003), in reaction to the Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth in the Democratic Republic of the Congo [S/2002/1146]

Filed jointly by
Oryx Natural Resources Limited and Mr Thamer Al Shanfari



INTRODUCTION and SUMMARY

This Memorandum is submitted jointly by Oryx Natural Resources ("Oryx") and its former Chairman Mr Thamer Al Shanfari ("Mr Al Shanfari"). It is made in response to the Security Council, which in Resolution 1457 (2003) invited individuals, companies and States named in the Report of the Panel of Experts[S/2002/1146] ("the Report" and "the Panel") to submit their reactions to the Report.

Oryx and Mr Al Shanfari were subject to intense criticism in the Report and were listed in an Annex to the Report as "Companies/Persons on which the Panel recommends the placing of financial restrictions", along with other multinational companies operating in the DRC.

Oryx and Mr Al Shanfari have always maintained since the publication of the Report, and continue to maintain, that the allegations of wrongdoing were false.

Oryx and Mr Al-Shanfari are fully supportive of the position of the Security Council in its Resolution 1457, notably in its definition of the current process, as laid out in paragraph nine of the Resolution. It is in the spirit of this that Oryx and Mr Al-Shanfari met with the Panel in March and May 2003.

Although they would have welcomed the opportunity to respond to the allegations when Oryx approached the Panel in July 2002, prior to the publication of the Report, they have been encouraged by the dialogue that they have had with the Panel since then.

Since the publication of the Report, Oryx and Mr Al-Shanfari have held a number of meetings with the Panel, both in New York and in Nairobi, and have now received the Panel's unanimous and clear assurance that as a result of these meetings and the full and frank disclosure by both Oryx and Mr Al-Shanfari the Panel is recommending to the Security Council the removal of the Company and Mr Al Shanfari from all of the annexes of its Report and can no longer persist with the allegations against the company and Mr Al Shanfari. No allegations of wrongdoing remain.

As a result of these disclosures and discussions, concluded on 24th May 2003 in Nairobi, Oryx prepared a text and agreed it point by point with the Panel, and has reached a minuted and formal resolution with the Panel that the document reflects the unanimous agreed view of the Panel, Oryx and Mr Al Shanfari in accordance with UN Resolution 1457. This is copied below. Oryx would like to take this opportunity to thank the Panel for its time, and the opportunity to clarify these issues.

Oryx and Mr Al-Shanfari welcome the dialogue which they have had with the Panel and welcome this position of the Panel. Both look forward to being able to assist in any future role the Panel may have.

Note upon the conclusion of Oryx's meetings with the Panel

Oryx notes that the Security Council has mandated the Expert Panel on the DRC, and encouraged companies and individuals named in the Report of October 2002 to exchange information and re-examine the allegations recorded in the Report. Consequently Oryx and Thamer Al Shanfari have been afforded the opportunity to make representations to the Panel and have been given some documents and other information on which the Panel relied (subject to the Panel's obligation to protect the safety of its sources). Oryx and Thamer Al Shanfari have answered all the questions that the Panel has raised.

A: Introduction

Oryx Natural Resources welcomes constructive criticism from any expert quarter, and supports the Security Council's intentions in the creation of the Panel and its inquiry.

In a spirit of co-operation, the Panel, Oryx and Thamer Al Shanfari have engaged in a dialogue and exchange of documentation and other information regarding the Panel's allegations.

Oryx acknowledges that certain aspects of the Sengamines project, which though neither illegal nor in any way secret, might be considered not to have matched the 'best practice' that the Panel is trying to encourage. Oryx welcomes constructive criticism in this regard.

B: Long Term Commitment

Oryx has a long term interest in the further development of a stable, transparent economy in the DRC, backed up by the rule of law. The company is happy to endorse the Panel's efforts, and work closely with any future role that the Panel or its successors might have in monitoring and issuing constructive criticism.

Oryx and Thamer Al Shanfari undertake to ensure that any future projects where they are involved will adhere to the ethical standards embraced by the Panel.

Oryx invested in the DRC during a period of hardship for the country when it was receiving little support and minimal inward investment.

C: Preventive Measures

Following the publication of the Panel's Report on October 16th, 2002, and in light of the constructive dialogue with the Panel, Oryx has conducted a review of its business practices. Oryx and Thamer Al Shanfari have taken, and will continue to take, very seriously any rumours or allegations made against Oryx or Thamer Al Shanfari or Sengamines from whatever sources.

Consequently, Oryx is planning to establish a specific mechanism, including the introduction of new PR briefings and controls and procedures. This is to minimise the

risk of wrongdoing or improper behaviour by Oryx employees and agents or other parties and to promote a better understanding of the company by all parties in a transparent and open manner. Oryx and Thamer Al Shanfari will continue to investigate vigorously any allegations of wrongdoing in a public, open and transparent manner.

D: OECD

Oryx is committed to adhering fully with the OECD Guidelines for Multinational Enterprises as the standards for its business practices and governance. Oryx will therefore liaise with the OECD National Contact Point to help Oryx set up the appropriate rules and practices and through regular meetings intend to keep it informed of progress on implementation.

Oryx proposes to hold regular meetings with the Panel to ensure that its relationship with the UN and other relevant institutions is constructive and mutually beneficial.

E: Specific Allegations

Oryx notes that the Security Council Resolution 1457 states that the Panel is not a judicial body, and does not have the resources to carry out an investigation whereby its findings can be considered as established facts. Oryx acknowledges the difficulties that the Panel faces in the handling of information without judicial process. Oryx also notes that the Panel based its opinion on activities in the DRC with the information it held at that time.

Since publication of the Report in 2002, there has been extensive dialogue between Oryx, Thamer Al Shanfari and the Panel, during which the Panel was provided with substantial quantities of information. Oryx believes that this process has enabled the Panel to update and expand its knowledge of the activities of Oryx and Thamer Al Shanfari.

Oryx understands that as a result of its dialogue with the Panel the names of Oryx Natural Resources and Thamer Al Shanfari will be removed from the annexes of the Panel's Report of October 2002. Oryx understands that as a result, the disputed allegations recorded in this Report about Oryx and Thamer Al Shanfari can no longer be pursued.

Oryx further understands that the Panels work in this field is by nature constantly developing. Oryx remains ready to engage in discussions about any future concerns or allegations that may arise in the future to enable the Panel to base its assertions on the best possible information.

Oryx hopes that the Panel's findings will promote a transparent and open understanding of Oryx Natural Resources' and Thamer Al Shanfari's role in the development of Sengamines SARL.

24th May 2003, UN offices, Nairobi.

Reaction No. 27

From the desk of Mr. Marc De Block
Attorney at law
Antwerp - Belgium

FINAL ATTACHMENT TO REPORT PANEL OF EXPERTS ON DRC

On behalf of NAMI GEMS BVBA

To the attention of
SECURITY COUNCIL UNITED NATIONS
PANEL OF EXPERTS
UNITED NATIONS
EXPNATDRC/UNON

REF: Resolution 1457/2003
AT THE REQUEST OF:

1. a company according to Belgian law, the company **BVBA NAMI GEMS**, with registered office at Hoveniersstraat 53 box 34, 2018 Antwerp

(Hereinafter called "*parties mentioned*")

represented by Mr. Marc De Block, attorney at law in Belgium, having his office Vlaamse Kaai 54-57 at 2000 Antwerp, Belgium.

1.

The Panel of Experts on the Illegal Exploitation of Natural Resources and other Forms of Wealth in the Democratic Republic of the Congo was appointed on request of the Security Council dated **2 June 2000** (S/REST/2000/20)

The original mandate of the Panel was:

- to follow up on reports and collect information on all activities of illegal exploitation of natural resources and other forms of wealth of the Democratic Republic of the Congo, including the violation of the sovereignty of that country;
- to research and analyze the links between the exploitation of the natural resources and other forms of wealth in the Democratic Republic of the Congo and the continuation of the conflict;
- to revert to the Council with recommendations. (S/2001/357, p. 3)

A first report was published the **12th of April 2001** (S/2001/357).

The Panel's mandate was extended until the **30th November 2001** (S/2001/951).

A second report was published the **13th November 2001** (S/2001/1072).

A third report was published the **16th October 2002** (S/2002/1146).

The Security Council took a new resolution on the **24th January 2003** (Resolution 1457/S/RES/1457/2003)

Following the text of Resolution 1457 (2003) of the Security Council dd. 24/01/2003, the Panel of Experts was explicitly requested "***to provide parties concerned, all information and documentation, connecting them to the illegal exploitation of the Democratic Republic of the Congo's natural resources and/or as being in contravention with OECD-guidelines***".

A first deadline was set before the **31st of March 2003**, whereas the Panel would then have to publish our reactions as an attachment to their report, no later than 15th of April 2003.

Arguments however had to be deposited without having received any information and/or documentation from the Panel before the 31st of March.

Just before expiration of the deadline of 30th of March 2003 the Panel of Experts asked and obtained (for itself) an extension from the Security Council to provide such information / documentation, this time before the end of May 2003.

Following this Resolution 1457 - the defense notes on behalf of parties concerned, were already sent **on 24th of March with request to publish these before 15 April 2003 as annex to the Report in accordance with Resolution 1457.**

In view of the fact that we didn't receive any information and / or documentation - and this despite numerous requests - from the Panel - and this in breach with the resolution - the defense remained limited.

As from the same day, the **24 March 2003** a Note was published on the Internet by the President of the Security Council stating:

> *"Following consultations among the members of the Security Council, they have decided, in order to give more time to the individuals, companies and States wishing to send to the Secretariat their reactions to the findings of the last report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo (S/2002/1146), to extend the deadlines set out in paragraph 11 of Security Council resolution 1457 (2003) of 24 January 2003. Those individuals, companies and States named in the Panel's last report are invited to send their reactions to the Secretariat no later than 31 May 2003, in order for these reactions to be published no later than 20 June 2003."*

The Panel **did not attempt to visit or hear people and companies they named and shamed in their reports and this since 2nd June 2000 or being a period of almost three years**…!

According to the Decisions of the Court of Human Rights (Hof Mensenrechten) (3e afd.) nr. 29731/96, 13 February 2001 (Krombach / Frankrijk), the right of everyone charged to be effectively defended and represented by a lawyer, assigned officially if need be, is fundamental and according to Articles 6 §§ 1 and 3 (c) of the Convention on Human Rights has the right to defend himself in person or… **through legal assistance of his own choosing.**

Invitations by the Panel to finally come to Nairobi, Kenya was first sent 9th April 2003 and this to come to Nairobi between 14 and 30 April 2003!

The Panel had to know - and was even informed explicitly - that many or most diamond offices in Belgium were closed for the Easter Holidays in this exact period and would not reopen until 28 of April 2003.

10 to 12 people had to stop all their normal activities and had to rush to Nairobi from all over the world on request of the Panel and this in such a period, on such short notice after the Panel had three years to invite, hear and or see anyone, anywhere they liked.

Translators, they were told, they could find for themselves and it was mentioned that also "*lawyers were welcome*".

The Panel stated further:

> ***"The degree of cooperation already developed between…and the Panel suggests that this meeting could produce positive outcomes, including arriving quickly at a mutually satisfactory solution to this matter…"***

Stating that " *information* " could only be handed over for review in face-to-face meetings made such proceedings a charade. Under such pretext no reasonable control or contradiction of information was reasonably possible and it entitled the Panel to show whatever they wanted and to give any explanation they want in a report afterwards on what they so-called presented as information.

My clients did not want to be made part of such kind of simulation, as it appeared only intended to give the Panel a

formal opportunity to write in a final Report that all people and companies were invited, seen and heard and confronted with " evidence" in face to face meetings, while in reality no such real possibility of verification, contradiction and/or marginal control on any information was rendered.

Representation by an attorney or any other means of communication were rejected and this despite efforts from the Belgian Ministry of Economic Affairs to send information / documentation through their diplomatic services.

The Panel stated on forehand that no documentation or information would be given to anyone unless they personally came to Kenya. The Panel would not grant any meetings with legal representation unless one or more of his clients in person accompanied the attorney.

All parties concerned were obliged to travel in person to Nairobi as from the 23rd of April 2003.

Very limited appointments were granted and to each party was given approximately 5 to 10 minutes time, although the Panel alleges it speed "*5 hours*" in total on 9 different parties…

Relevant is that no explanation whatsoever was given by the Panel and the Panel handed over its so-called "*evidence*".

What the Panel called "*evidence*" could be regarded as completely ridiculous if the case was not so tragic.

Each party was given **one** (1) page, typed by the Panel of Experts itself and only containing a **summary** of the accusations itself.

So the Panel wants to present as evidence a summary made by itself of the accusations it made.

Parties concerned were asked to sign this document after which they could receive a copy.

If they refused to sign, they could not get a copy.

It is clear that until today the Panel of Experts has not respected the resolutions of the Security Council and has not provided any information and/of documentation as it was requested to do by the Security Council.

The composition of the Panel was changed during the reports and different people and companies were named and shamed in the different reports.

2.

All reports of the Panel of Experts were immediately published on the Internet and therefore considered to be authoritative and trustworthy, although the United Nations itself had no control over the content of such reports.

Banks in Belgium closed accounts, the R.C. President Kabila fired several government officials implicated by a Panel and third parties like the Beers asked clients not to deal with companies accused in the report of the Panel of Experts.

The result for people and companies mentioned was devastating.

The Panel of Experts never published or rendered <u>any</u> evidence or even information on which it based its findings and this despite numerous requests by parties mentioned in the report,

by governments, national prosecutors and even a Senate Committee.

Only at the very last moment a document was created and given and this only to enable the Panel to say that "*documentation*" was given, quod non.

The Panel of Experts never gave <u>any</u> information about general guidelines it would have is used for making such reports or required standards of proof it utilized.

The practice of "*naming and shaming*" is unworthy for the United Nations and did not even follow elementary guidelines or general principles of law or ethics.

The Panel of Experts never even set out any ethical guidelines it might have used or created any mechanism of communication to consult with member states, other organizations or parties mentioned in their reports.

The Panel did not attempt to visit or hear people and companies they named and shamed in their reports and many parties rightfully expressed their outrage that the Panel of Experts:

* failed to contact parties mentioned or even to ask for their comments and
* never publicized any shred of evidence leading to their conclusions or made such evidence available to parties concerned, or at least to member states and their judicial authorities.

These comments still stand today.

It should be clear to any reasonable man that grave allegations should be backed by high evidentiary standards, quod non.

The Panel of Experts did not use such standards.

There was not even a procedure that allowed people or companies that had been accused to even know what kind of evidence was used where the Panel of Experts just preferred to publicly tarnish and destroy the reputation of a great number of companies and people.

As it was mentioned from the outset by the Panel itself, the principle of naming and shaming was "*high on their priority list*" and this without any explanation, any reasonable standard or any right of defense.

The danger of accusations made without a due process are clear and such accusations not only damage the people and companies involved, but also undermine the credibility of the United Nations past, present and future panels.

With regard to the firm BVBA NAMI GEMS, this company was **NOT** mentioned in the list of companies for which financial restrictions or travel bans were proposed.

The company was only listed in Annex 3 of Report S/2002/1146 as a company considered to be in violation of OECD-guidelines for multinational enterprises, quod non.

Whereas:

- this company mainly provides itself on the Antwerp Diamond Market;
- there were only very limited purchases from the DRC;
- all purchases from the DRC stopped completely even before the publication of the third Report of the Panel of Experts;
- OECD guidelines are not enforceable;
- OECD-guidelines are not applicable for the company BVBA NAMI GEMS, since the firm BVBA NAMI GEMS is not a multinational.
- it was never explained by the Panel of Experts which aspects of such guidelines would not have been respected.
- the limited trade that was done from the DRC (only a few invoices) was completely legal and such imports were done through the Diamond High Council and the Diamond Office in Antwerp, Belgium.

Also after Resolution 1457 the Panel never gave any explanation on why and how OECD-guidelines would have been broken by NAMI GEMS.

3.

The practice of "*naming and shaming*" as the Panel of Experts used it contravenes to the following articles in the Universal Declaration of Human Rights:

PREAMBLE

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the

conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

...

Article 2.

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political,

jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

….

Article 6.

Everyone has the right to recognition everywhere as a person before the law.

Article 7.

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 10.

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11.

(1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense.

(2) No one shall be held guilty of any penal offence on account of any act or omission, which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier

penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12.

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks.

The refusal to give any opportunity to be heard on forehand and to give any defense afterwards or to be provided with any documentation and/or information is a flagrant violation of the above articles of the Universal Declaration of Human Rights.

It is also in violation of similar articles in the Pact of New York and the European Treaty on Human Rights.

4.

Immediately upon publication of the report, the Panel of Experts was requested numerous times to give even the smallest opportunity to present a defense.

The legal counsel requested an opportunity at any given place, time and date to present a defense and to be provided with any documents and / or information on the following occasions:

* fax messages 28 October 2002 (6)

* fax messages 6 November 2002, fax to United Nations 7 November 2002, fax to United Nations 13 November 2002 (3)
* E-mail 21 November 2002, e-mail 25 November 2002, visit New York 18 November 2002, e-mail 3 December 2002, e-mail 10 December 2002

Parties mentioned never received any documentation and / or information or any reasonable opportunity to present their defense before the Panel of Experts.

Only at the last moment the Panel mad a futile attempt to enable itself tot state that "*the letter*" of Resolution 1457 would have been respected, quod non (see supra).

5.

Resolution 1457 (2003) stated clearly:

> *"9. Stresses that the new mandate of the Panel should include:*
>
> - *Further review of relevant data and analysis of information previously gathered by the Panel, as well as any new information, including specifically material, provided by individuals and entities named in the previous reports of the Panel, in order to verify, reinforce and, where necessary, update the Panel's findings,* ***and/or CLEAR parties named in the Panel's previous reports, with a view to adjusting accordingly the lists attached to these reports;***
>
> *11. Invites, in the interests of transparency, individuals, companies and States, which have been named in the Panel's last report to send their reactions, with due regard to commercial confidentiality, to the*

Secretariat, ***no later than 31 March 2003****, and requests the Secretary-General to arrange for the publication of these reactions, upon request by individuals, companies and States in the report of 15 October 2002, as an attachment to this report,* ***no later than 15 April 2003****;*

12. Stresses the importance of dialogue between the Panel, individuals, companies and States and ***requests in this regard that the Panel provide to the individuals, companies and States names, upon request, all information and documentation connecting them to the illegal exploitation of the Democratic Republic of the Congo's natural resources****, and requests the Panel to establish a procedure to provide the Member States, upon request, information previously collected by the Panel to help them take the necessary investigative action, subject to the Panel's duty to preserve the safety of its sources, and in accordance with United Nations established practice in consultation with the United Nations Office of Legal Affairs."*

Following this resolution of the Security Council parties **(again)** asked the United Nations and especially the Panel of Experts to be provided with such documentation and / or information in order to be able to present such defense before the deadline of the 31st of March 2003 and in respect of Resolution 1457 (2003) and this was refused.

Not-limited, the following fax messages and e-mails were send by legal counsel to request such documentation and / or information: fax messages 29 January 2003 (3), e-mail 29 January 2003 (6), e-mail 6 February 2003 (4), e-mail 26 February 2003, e-mail 10 March 2003, e-mail 26 February 2003, e-mail 10 March 2003, fax messages 10 March 2003 (3), e-mail

11 March 2003 (3), e-mail 14 March 2003, fax message 17 March 2003, e-mail 17 March 2003 (2).

Legal counsel of client visited New York to meet with one Panel member, Mr. Bruno Chiemsky on the 19 March 2003, but was further denied any documentation or information at this occasion.

The Panel of Experts did not respect the Resolution of the Security Council 1457 (2003), namely to respect the deadline to provide documentation and / or information regarding parties mentioned in the Report and this before the 31st of March 2003 so consequently parties mentioned had nothing to defend themselves on at that time.

Parties mentioned did respect Resolution 1457 (2003).

It is clear that the Panel of Experts also did not respect Resolution 1457 after the extension it obtained from the Security Council.

There is a difference between providing real information and documentation or just pretending to give such information and documentation where in reality the Panel was only interested in being able to **formally** allege that they respected the Resolution 1457, quod non.

Giving a "*summary*" of allegations is not giving any information and/or documentation at all.

6.

Parties have even presented themselves before the Public Prosecutors in Belgium and this strictly on their own initiative in order to ask the Public Prosecutor to start an investigation in order to clear their names. An unorthodox request to be provided with justice.

The Panel of Experts never provided any documentation and / or information to such judicial authority in Belgium or any other country.

Parties are not only confronted with a despicable method of "*naming and shaming*" but were even refused to verify any information and / or documentation and thus to be informed promptly of the causes of the accusations made against them and a fortiori to have any adequate time or facilities for the preparation of any accurate reply.

I further refer to article 8, 10 and 11 of the Universal Declaration of Human Rights and especially article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms:

> *"Article 6 - Right to a fair trial*
> *1. In the determination of his civil rights and obligations or any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private*

life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

a. ***to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;***
b. ***to have adequate time and facilities for the preparation of his defence;***
c. *to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;*
d. *to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;*
e. *to have the free assistance of an interpreter if he can not understand or speak the language used in court."*

The Panel of Experts put all such elementary rights aside. (Cfr. Infra)

7.

The United Nations has only asked the Panel of Experts - and given a mandate to the Panel of Experts - to evaluate possible actions to be taken by the Security Council and to advise the Security Council on recommendations to be made to the international community, meaning countries, in order to ensure the evolution of the peace process in the Democratic Republic of the Congo.

The Panel never received a mandate to attack private business people and / or companies.

The Panel of Experts also never even had the possibility to compel testimony or documents and never had any judicial authority whatsoever and recognised this explicitly.

This means that the Panel of Experts at most received some dubious information on a strictly voluntary basis and did not have any means to verify whatsoever with regard to such information that was given to them.

8.

Such judicial authority was given to the Belgian Senate's commission "*Great Lakes*", which in Belgium obtained similar authorities as a Judge of Instruction to perform an investigation.

Following the 3 reports of the Panel of Experts, this Belgian Investigating Commission of the Senate conducted an investigation and published its findings with a report on the 20th February 2003.

Parties were summoned and appeared before this Senate's Commission a.o. to give a declaration under oath.

After investigation, the Senate's Commission concluded the following:

> *"The Commission has noted that several companies and / or persons, mentioned in the UN-report, have not been heard on forehand, which jeopardizes their rights of defence.*
>
> *Moreover the work of the Commission was made more difficult in view of the fact that she was not provided with any evidence and / or indications that should support the allegations in the UN-reports."* (Free translation, report Senate Commission dd. 20 February 2003, p. 2 § 1)

Also:

> *"From the beginning of her activities, the Commission had been confronted with the lack of legal, sufficient and workable definitions in the UN-reports of the concepts "legal and illegal" and "plundering"."* (See report Belgian Senate's Commission dd. 20 February 2003, p. 7 § 5.1)

Also:

> *"Economic activities or trade with companies or persons in each of the territories in the DRC can in itself not be considered illegal."* (See report Senate's Commission dd. 20 February 2003, p. 7 § 5.3)

"The Commission asks the Government to insist with the United Nations to come to a more clear description of the concepts legal and illegal and of plundering of natural resources and this in view of further activities of the United Nations Panel." (See report Senate's Commission, p. 7 § 5.9)

And:

"The Commission has noted that the United Nations only issued embargos against countries like Angola, Sierra Leone and Liberia, and therefore trade with other countries and even conflict areas must be considered as legal." (See report Senate's Commission, p. 19 § 3.1.6.)

And:

"With regard to the allegations formulated by the UN Panel against a number of diamond companies that OECD-guidelines would not have been respected, the Commission states that (not withstanding the fact that only concerns guidelines that are not enforceable) such guidelines are not even applicable for the diamond companies concerned because they can not be considered as multinationals. Above that, the Commission is of the opinion that the UN Panel must clarify which aspects of guidelines would not have been respected." (See report Senate's Commission, p. 22 § 3.2.1)

And in conclusion:

"In this context and based on the available information, the Commission has to conclude that with regard to the

> *concerned diamond companies <u>no legal, incriminating elements can be found and that these diamond companies have acted in good faith.</u>"* (See report Belgian Senate's Commission, p. 23)

The Belgian Senate's Commission also noted that the Panel of Experts was clearly not infallible, since the Panel of Experts already needed to clear names of companies they named and shamed without hesitation before:

> *"The Commission, based on available information, joins the consideration mentioned in the second UN-report where it is stated that the company (Arslanian Frères) was mentioned unjustly in the first report and therefore has cleared this company."* (See report Belgian Senate's Commission, p. 26, § 3.2.5.)

9.

Parties mentioned have as their most important activity the trade and / or the import and the export of diamonds.

They have had until the publication of the Report an irreproachable reputation in the diamond trade and this for many years.

The diamond trade in Antwerp is concentrated on a relatively small surface, being in practice 2 streets (Hoveniersstraat and Schupstraat) where all well-established companies that do business in diamonds are situated. It is a matter of common knowledge as well as an economic fact that the diamond trade

in Antwerp (or elsewhere) fundamentally relies on confidence and *"hear-say"*.

A good reputation in the diamond trade is essential, even vital, for every diamond dealer or every company that does business in diamonds.

The reputation of parties mentioned has been irrevocably damaged by the Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and other forms of Wealth of the Democratic Republic of the Congo dd. 8 OCTOBER 2002 (S/2002/1146).

10.

In contradiction to what is stated or suggested in this report parties mentioned emphasize not to be conflict diamond dealers, or to be members of *"clans "* or associated with such clans, criminal organizations or criminal activities or to have done any illegal or unethical activity.

Every appearance of their name in the media with regard to the report - even while defending their name - only results in more unnecessary publicity and additional damage to the reputation.

Several international newspapers and other news channels have picked up the name of parties mentioned in respect to the report and negative publicity is unavoidable and beyond repair.

Banks have revoked and/or threatened to withdraw credit lines and major clients suspended all further transactions, afraid

to be connected to someone so strongly accused by the United Nations where in fact the Panel is not the United Nations.

11.

It is a basis principle in any democratic state that persons who are accused have minimum rights to defend themselves.

In the report of the Panel of Experts, made public on the Internet, people and companies were named and accused without being heard and even without any reasonable possibility to reply.

For the record it can be noted, as general rules, that:

a) Parties mentioned have a respected business and do not deal in conflict diamonds or conduct any illegal or illegitimate activities;

b) Parties mentioned were not allowed to defend themselves with a full knowledge of the facts and minimal to be able to know some motive or fact that would make a minimum of control possible, quod non;

c) To avoid arbitrariness it is necessary that some concrete facts and elements on which the allegations would be based, are at least retrievable, quod non;

d) Declaring without any proof or fact that parties mentioned would be conflict diamond dealers and or criminals or have done something illegal or unethical should be considered as an act of slander and defamation.

Parties mentioned refute categorically the baseless accusations and inform that:

a) They never received dialogue or information and/of documentation from the Panel of Experts.
b) Have never been heard or invited by the Prosecutor in Belgium, any police organization or any other authority
c) Have never been involved in any criminal or illegal activity
d) Have a legitimate business operation asserted by documents from the High Council and the Diamond Office in Antwerp, checked for the origin by the customs authorities and forwarded to the HRD Diamond Office Antwerp (Diamond High Council).
e) Are situated in the heart of Antwerp working closely with the most respectable representatives in the Diamond business

12.

It is unlikely that when a person or company stands accused by a Panel Report, a democratic Government would give support unless it is sure of your correctness whereas all imports from diamonds are legal and a full audit can be provided.

The definition of a conflict diamond itself could be rendered meaningless. According to the World Diamond Council a "conflict diamond" is a diamond imported in violation of law or resolutions of the United Nations, intended to end trade in diamonds extracted from "Conflict Regions". Obviously, having imported diamonds legally into Belgium and in accordance with UN resolutions makes a diamond not a conflict diamond according to the World Diamond Council or any other standard.

It should also be clear that parties mentioned are fully committed to the UN's position relating to conflict diamonds.

13.

Parties mentioned defend themselves with the firmness and the certitude of being wrongly accused.

It needs no argument that an enormous injustice is committed and it is a shame when, in the name of the United Nations, persons and companies are branded worldwide on the internet, merely based on rumors, false information or hearsay, without any further interest in the accuracy of the information that is spread or the severe consequences for the people involved.

In such case arbitrariness rules and everyone that is pointed at is declared an outlaw without any further defense.

Parties mentioned are well aware that representatives of Member States to principal and subsidiary organs of the United Nations enjoy immunity from legal process in respect of words spoken or written and all acts done in capacity as such a representative. Parties mentioned are also aware that, moreover, the United Nations also enjoys immunity from every form of legal process. That having been said, parties mentioned only requested the opportunity to present their defense, to have their arguments verified and to be confronted directly with any information that would be held against them and this was simply denied in breach with Resolution 1457 (2002) that ordered the Panel to do so.

14.

In the report of the Panel of Experts it is nowhere stated which *"evidence"* would allow to utter accusations against parties mentioned.

At most one is rendering a self-account, where one should accept that only information would have been used that has been confirmed by more than one source?

The Panel calls a summary of the allegations "evidence"...?

This way nothing more than *"belief"* is requested for the used working-method, without the necessary effort to show what *"reliable"* information would be at hand and what verifiable criteria would have been used.

It is also to easy to us the term *" known to intelligence services and police organizations "*
(See report § 34 page 9)

Of which services and organizations is the Panel talking about?

Parties mentioned have been living and working in Belgium for years at the same address in Antwerp, together with their family.

Parties mentioned have a clean criminal record, have never been accused of anything illegal by the authorities and have never been invited to give any declaration or even answer any question by such authorities.

15.

There is a clear contradiction in the report.

If the information would be correct - which it is not - there would at least have been a disturbance in some way by Belgian or other authorities and at least someone would have been interrogated, accused or under investigation (if not arrested), quod non.

If the investigation of such criminal activities however, were to be held so secretive that they are only known to " intelligence services " it would be incredible to publish such secret information worldwide on the Internet in a report that is read by millions of people.

Parties mentioned can only base themselves on the certainty that they have not infringed any embargo or law and that they did not, neither directly, nor indirectly, nor in person, nor as a middleman, nor by means of companies or third parties,

not in any other way of form dealt in so-called conflict diamonds or have been associated with any criminal or unethical activity.

A legal adage states *"negativa non sunt probanda"*, which means that negative facts cannot be proven.

The above-mentioned adage is based on the idea that it is practically impossible to give evidence of a negative fact.

How can someone (or a company) proof that he (it) did not do something during a well-defined period of time?

The only possibility that is available is to proof an opposite positive fact or a series of positive facts that can exclude the negative fact.

If parties mentioned would have been contacted before the publication of the report on the Internet, damage could have been avoided and parties mentioned would have been able to show on forehand that the information the Panel obtained was clearly false.

The Panel was invited on numerous occasions to provide a copy of one record of proof against parties mentioned, that cannot exist for the simple reason that parties mentioned did not do what they are accused of.

Providing a summary of allegations, made up by the Panel itself, and handing over one additional document, an official import license for one shipment, is no evident whatsoever.

This meets only the letter of the Resolution 1457, not the spirit!

16.

Parties mentioned have to suppose - for the time being - that the Panel should have received some information that has led to the mentioning of their names in the report.

Parties mentioned have to accept - for the time being - that wrong and false information has been provided, by which the Panel could have been misled and bad intent cannot be excluded where such negative publicity favors some competitors.

Parties mentioned however are left in the dark and did not receive any information and/documentation and/or explanation from the Panel.

It is in the interest of the Panel to test the truthfulness and the reliability of the information received together with the requestors and based upon the data they provide.

On at least two occasions a Panel of Experts made wrong accusations in a report and a correction had to be made after presentation of the defense:

17.

In the first report, published on the Internet, of this Panel of Experts regarding the Democratic Republic of Congo dd. 12 April 2001 (S/2001/357) a firm ARSLANIAN FRERES NV was heavily accused as follows:

"*ARSLANIAN,* ***the conflict diamond dealers*** *in the Eastern Democratic Republic of the Congo, provided on average 2.000.000$ per year, each directly to the Congo desk …"*
(See Report Panel of experts of 12 April 2001, p.29, nr. 127)

After ARSLANIAN FRERES NV defended itself on these accusations the name was completely removed from the final report and, on the contrary, in annex IV of the report the Panel of Experts expresses its **deep appreciation and gratitude** towards ARSLANIAN FRERES for having assisted the Panel of Experts in making the report (see annex IV report S/2002/1146)

ARSLANIAN FRERES was wrongfully accused and a correction was made, much to the honor of the Panel of Experts.

18.
The same happened with a firm called MACKIE DIAMONDS in Antwerp.

In the original report of the Panel of Experts regarding Angola it was stated:

"*76. Azet Mohammed, who holds a British protected citizen passport, was arrested in March 2001. He was arrested for possession of a parcel of diamonds worth $100,000. Mohammed was described as the "lieutenant" of diamond dealer Ali Mackie Fouad Abess, of Mackie Diamonds in Antwerp, a Lebanese diamond dealer who was also a dealer in Sierra Leonean diamonds. Mackie, who holds a United States passport, began working in Angola in late 1999. He was deported from Angola for possession of false papers when Mohammed was arrested. Jackie's activities in Angola are under investigation."*

(See letter Chairman Mr. Richard Ryan, Security Council Committee dd. 16.04.2001, p.20, nr. 76)

Also these accusations were proven completely false and - after presentation of the defense - were corrected in a following report.:

"Correction

221.Contrary to the information contained in paragraph 76 of the Mechanism's previous report (S/2001/363), there is no person know as Ali Mackie Fouad Abess. Mr. Ali Mackie, who has never been known by name or nickname as Fouad Abess, does not have any relationship with Mohammed Azet. Mr. Ali Mackie, a Belgian citizen of Lebanese origin, is the owner and director of Mackie Diamonds in Antwerp. He does not possess a United States passport. He was neither arrested in, nor deported from, Angola. While Mr. Mackie had business interests in Angola prior to 2000, the Angolan authorities have not reported any investigation into his activities in Angola."

(See UN report on Angola S/2001/966 dd. 12 October 2001, p.43, par. 221)

At least these two clear examples prove that there certainly is a possibility that wrongful accusations were uttered and corrections are necessary.

19.

In spite of the damage that was done parties mentioned wanted to accept - for the time being - that the Panel acted in good faith and that it only concluded upon false, faulty or wrong information that has been given to them, if such information exists.

To avoid arbitrariness it is necessary that the concrete facts and elements on which the allegation is based, are at least retrievable, quod non

At least parties mentioned should have been allowed to defend themselves with a full knowledge of the facts and minimal to be able to know some motive that would make a minimum of control or contradiction possible, quod non

I presume every reasonable man should agree that arbitrariness is unacceptable.

From a normal cautious and careful person it can be expected that he seeks the truth by controlling his facts as much as possible and that he refrains from spreading rumors that could damage a party if he is not able to show the truthfulness of such rumors

20.

Declaring in public without being able to provide any proof or fact that parties mentioned would be involved in illegal or unethical activities would constitutes a crime of slander and defamation according to standards of many legislation, not only Belgian law.

Parties mentioned could accept that the original goal of the Panel is a noble goal that deserves all means and attention but on the other side this does not mean that all elementary principles of law can be put aside and companies or persons can be branded based only on mere malicious rumors and allegations.

In such case we honestly speak of a witch-hunt, were arbitrariness rules and everyone that is pointed at is declared an outlaw without any further defense.

The term witch hunt is not farfetched if there is no control on the investigation, if there is an absolute immunity for the prosecutors, a complete anonymity regarding alleged sources of information, no necessity to present evidence, no possibility of contradiction, no possibility to defend or reply and in the end the accused is asked to accept what is to him only a pattern of slander and defamation.

The Panel should not be allowed to hide behind the so-called safety of it sources and therefore being capable of providing no evidence whatsoever and to consider itself unbound by any due process of law.

When in the medieval age the Inquisition wanted to protect a witness who was ready to testify that he/she had seen a suspect communicating with the devil the witness was allowed to appear in court with a mask, or hood, over the face. This was how the court heard the "truth", and the witness was protected from the evil eye of the witch who might take revenge after being burned at the stake.

What can not be allowed, if we do not want to turn back the clock 500 years, under any circumstances is the permanent concealment of the identity of so-called witnesses, neither the refusal to present any document or the content of any declaration whatsoever and this on "grounds of confidentiality"

One can ask what kind of witness would exist that can give the Panel confidential information and then can refuse to answer further questions as to how such information was obtained or even the accused to verify the content of a declaration.

Going on the statements of the Panel itself as a rule this could be an undercover agent, who have been necessarily operating illegally in foreign countries in order to collect information that cannot be obtained by regular means.

It is clear that such "*evidence*" can not be excepted as valid and such clandestine witnesses can not be believed at all, more over where it is not even certain that the Panel is basing itself only on information received from undercover agents but could also exclusively be receiving very dubious information from competitors of parties concerned or any other party with an interest to damage parties concerned.

The court in Antwerp, which can be quoted as follows, gave a relevant judgment:

> *"By the public prosecutor no further information is given, nor is there a document rendered regarding the fact. In a former cession already a postponement was given in order to obtain permission from the State's Security Services to deliver documents in order to be able to judge the related, serious facts. For one reason or another no documents are rendered.*
> ***It is unacceptable that certain facts are quoted by the State's Security Services without producing any document of whatsoever to substantiate this allegation and without any right of the concerned person to defend himself.***

Such an attitude witnesses an unacceptable disapproval for the rights of defense. As much unacceptable is the fact that the court would be expected to judge a person without the judge even being able to render any control or to be able to judge a fact that is quoted against the concerned person…" (See Rb. Eerste Aanleg Antwerp, 12 February 2001, ongepubl., Seber / OM).

It is of course unacceptable that any Panel would be able to give unfounded allegations from a position of complete anonymity and immunity towards companies and persons and that these accused companies of persons should be sanctioned or even threatened in their existence, without any appropriate right of defense, especially if this is done under the name of the United Nations.

21.

Parties mentioned were ready to be confronted with each document, declaration or any other information that would have given rise to the mentioning of their name and the incorrect accusations coupled hereto and from which confrontation it would have been crystal clear that the requestors have been wrongly accused.

In breach with Resolution 1457 (2003) of the Security Council the Panel of Experts refused to provide any documentation and /or information as it was ordered to by the Security Council to do before 31 March 2003 and did not comply with it, not to the letter and certainly not to the spirit of the Resolution.

The only conclusion can be that the name of parties concerned should be cleared and explicit correction should be published.

Yours Sincerely,
For the requestors, their Attorney at law,

Mr. M. De Block
Antwerp, 22nd of May 2003

Reaction No. 28

From the desk of Mr. Marc De Block
Attorney at law
Antwerp - Belgium

FINAL ATTACHMENT TO REPORT PANEL OF EXPERTS ON DRC

On behalf of ABADIAM

To the attention of
SECURITY COUNCIL UNITED NATIONS
PANEL OF EXPERTS
UNITED NATIONS
EXPNATDRC/UNON

REF: Resolution 1457/2003
AT THE REQUEST OF:

1. a company according to Belgian law, the company **ABADIAM**, with registered office at Pelikaanstraat 62, 2018 Antwerp

(Hereinafter called "*parties mentioned*")

represented by Mr. Marc De Block, attorney at law in Belgium, having his office Vlaamse Kaai 54-57 at 2000 Antwerp, Belgium.

1.

The Panel of Experts on the Illegal Exploitation of Natural Resources and other Forms of Wealth in the Democratic Republic of the Congo was appointed on request of the Security Council dated **2 June 2000** (S/REST/2000/20)

The original mandate of the Panel was:

- to follow up on reports and collect information on all activities of illegal exploitation of natural resources and other forms of wealth of the Democratic Republic of the Congo, including the violation of the sovereignty of that country;
- to research and analyze the links between the exploitation of the natural resources and other forms of wealth in the Democratic Republic of the Congo and the continuation of the conflict;
- to revert to the Council with recommendations. (S/2001/357, p. 3)

A first report was published the **12th of April 2001** (S/2001/357).

The Panel's mandate was extended until the **30th November 2001** (S/2001/951).

A second report was published the **13th November 2001** (S/2001/1072).

A third report was published the **16th October 2002** (S/2002/1146).

Following the text of Resolution 1457 (2003) of the Security Council dd. 24/01/2003, the Panel of Experts was explicitly requested ***"to provide parties concerned, all information and documentation, connecting them to the illegal exploitation of the Democratic Republic of the Congo's natural resources and/or as being in contravention with OECD-guidelines"*.**

A first deadline was set before the **31st of March 2003**, whereas the Panel would then have to publish our reactions as an attachment to their report, no later than 15th of April 2003.

Arguments however had to be deposited without having received any information and/or documentation from the Panel before the 31st of March.

Just before expiration of the deadline of 30th of March 2003 the Panel of Experts asked and obtained (for itself) an extension from the Security Council to provide such information / documentation, this time before the end of May 2003.

Following this Resolution 1457 - the defense notes on behalf of parties concerned, were already sent **on 24th of March with request to publish these before 15 April 2003 as annex to the Report in accordance with Resolution 1457.**

In view of the fact that we didn't receive any information and / or documentation - and this despite numerous requests - from the Panel - and this in breach with the resolution - the defense remained limited.

As from the same day, the **24 March 2003** a Note was published on the Internet by the President of the Security Council stating:

> *"Following consultations among the members of the Security Council, they have decided, in order to give more time to the individuals, companies and States wishing to send to the Secretariat their reactions to the findings of the last report of the Panel of Experts on*

the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo (S/2002/1146), to extend the deadlines set out in paragraph 11 of Security Council resolution 1457 (2003) of 24 January 2003. Those individuals, companies and States named in the Panel's last report are invited to send their reactions to the Secretariat no later than 31 May 2003, in order for these reactions to be published no later than 20 June 2003."

The Panel **did not attempt to visit or hear people and companies they named and shamed in their reports and this since 2nd June 2000 or being a period of almost three years**…!

According to the Decisions of the Court of Human Rights (Hof Mensenrechten) (3e afd.) nr. 29731/96, 13 February 2001 (Krombach / Frankrijk), the right of everyone charged to be effectively defended and represented by a lawyer, assigned officially if need be, is fundamental and according to Articles 6 §§ 1 and 3 (c) of the Convention on Human Rights has the right to defend himself in person or… **through legal assistance of his own choosing.**

Invitations by the Panel to finally come to Nairobi, Kenya was first sent 9th April 2003 and this to come to Nairobi between 14 and 30 April 2003!

The Panel had to know - and was even informed explicitly - that many or most diamond offices in Belgium were closed for the Easter Holidays in this exact period and would not reopen until 28 of April 2003.

Parties concerned were unable to travel to Nairobi and representation by a lawyer was refused by the Panel of Experts

as if it should be considered normal for parties concerned to be able to stop all normal activities and to rush to Nairobi on request of the Panel and this in such a period, on such short notice after the Panel had three years to invite, hear and or see anyone, anywhere they liked.

Translators, they were told, they could find for themselves.

The Panel stated further:

> ***"The degree of cooperation already developed between…and the Panel suggests that this meeting could produce positive outcomes, including arriving quickly at a mutually satisfactory solution to this matter…"***

Stating that " *information* " could only be handed over for review in face-to-face meetings made such proceedings a charade. Under such pretext no reasonable control or contradiction of information was reasonably possible and it entitled the Panel to show whatever they wanted and to give any explanation they want in a report afterwards on what they so-called presented as information.

Parties concerned also did not want to be made part of such kind of simulation, as it appeared only intended to give the Panel a formal opportunity to write in a final Report that all people and companies were invited, seen and heard and confronted with " evidence" in face to face meetings, while in reality no such real possibility of verification, contradiction and/or marginal control on any information was rendered.

Representation by an attorney or any other means of communication were rejected and this despite efforts from the

Belgian Ministry of Economic Affairs to send information / documentation through their diplomatic services.

The Panel stated on forehand that no documentation or information would be given to anyone unless they personally came to Kenya. The Panel would not grant any meetings with legal representation unless one or more of his clients in person accompanied the attorney.

So until today parties concerned did not receive any information and/or documentation whatsoever, just because they were unable to travel to Nairobi, Kenya on the given date.

Relevant is that no further explanation whatsoever was given by the Panel and the Panel never handed over its so-called "*evidence*".

It is clear that until today the Panel of Experts has not respected the resolutions of the Security Council and has not provided any information and/of documentation as it was requested to do by the Security Council.

The Security Council took a new resolution on the **24th January 2003** (Resolution 1457/S/RES/1457/2003)

The composition of the Panel was changed during the reports and different people and companies were named and shamed in the different reports.

2.

All reports of the Panel of Experts were immediately published on the Internet and therefore considered to be authoritative and trustworthy, although the United Nations itself had no control over the content of such reports.

Banks in Belgium closed accounts, the R.C. President Kabila fired several government officials implicated by a Panel and third parties like the Beers asked clients not to deal with companies accused in the report of the Panel of Experts.

The result for people and companies mentioned was devastating.

The Panel of Experts never published or rendered any evidence or even information on which it based its findings and this despite numerous requests by parties mentioned in the report, by governments, national prosecutors and even a Senate Committee.

The Panel of Experts never gave any information about general guidelines it would have is used for making such reports or required standards of proof it utilized.

The practice of *"naming and shaming"* is unworthy for the United Nations and did not even follow elementary guidelines or general principles of law or ethics.

The Panel of Experts never even set out any ethical guidelines it might have used or created any mechanism of communication to consult with member states, other organizations or parties mentioned in their reports.

The Panel did not attempt to visit or hear people and companies they named and shamed in their reports and many

parties rightfully expressed their outrage that the Panel of Experts:

* failed to contact parties mentioned or even to ask for their comments and
* never publicized any shred of evidence leading to their conclusions or made such evidence available to parties concerned, or at least to member states and their judicial authorities.

These comments still stand today.

It should be clear to any reasonable man that grave allegations should be backed by high evidentiary standards, quod non.

The Panel of Experts did not use such standards.

There was not even a procedure that allowed people or companies that had been accused to even know what kind of evidence was used where the Panel of Experts just preferred to publicly tarnish and destroy the reputation of a great number of companies and people.

As it was mentioned from the outset by the Panel itself, the principle of naming and shaming was "*high on their priority list*" and this without any explanation, any reasonable standard or any right of defense.

The danger of accusations made without a due process are clear and such accusations not only damage the people and companies

involved, but also undermine the credibility of the United Nations past, present and future panels.

With regard to the company ABADIAM, this company was mentioned as *"one of the main commercial partners of a company MBC"*.

This company was **NOT** mentioned in the list of companies for which financial restrictions or travel bans were proposed.

Whereas:

- The company ABADIAM mainly works in the markets of South Africa and Brazil;
- never even bought any goods from MBC;
- was in the past during one and a half year agent for ORYX, receiving goods on consignment, which contract ended over more than one and a half year ago;
- In contradiction to the Report (S/2002/1146 p. 13 § 58), the Panel of Experts can not have bank records showing transfers of more than 1 million USD from the account of ORYS NATURAL RESSOURCES to ABADIAM, since such transfers were never performed and ABADIAM never received any such amount from ORYX, not on any Belgian bank account or any other bank account for that matter.

It should have been easy for the Panel of Experts to provide such bank records if they really existed, quod non.

Also after Resolution 1457 the Panel never gave any explanation on why and how OECD-guidelines would have been broken by ABADIAM.

3.

The practice of "*naming and shaming*" as the Panel of Experts used it contravenes to the following articles in the Universal Declaration of Human Rights:

PREAMBLE

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

…

Article 2.

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

….

Article 6.

Everyone has the right to recognition everywhere as a person before the law.

Article 7.

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 10.

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal,

in the determination of his rights and obligations and of any criminal charge against him.

Article 11.

(1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense.
(2) No one shall be held guilty of any penal offence on account of any act or omission, which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12.

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks.

The refusal to give any opportunity to be heard on forehand and to give any defense afterwards or to be provided with any documentation and/or information is a flagrant violation of the above articles of the Universal Declaration of Human Rights.

It is also in violation of similar articles in the Pact of New York and the European Treaty on Human Rights.

4.

Immediately upon publication of the report, the Panel of Experts was requested numerous times to give even the smallest opportunity to present a defense.

The legal counsel requested an opportunity at any given place, time and date to present a defense and to be provided with any documents and / or information on the following occasions:

* fax messages 28 October 2002 (6)
* fax messages 6 November 2002, fax to United Nations 7 November 2002, fax to United Nations 13 November 2002 (3)
* E-mail 21 November 2002, e-mail 25 November 2002, visit New York 18 November 2002, e-mail 3 December 2002, e-mail 10 December 2002

Parties mentioned never received any documentation and / or information or any reasonable opportunity to present their defense before the Panel of Experts.

Only at the last moment the Panel mad a futile attempt to enable itself to state that "*the letter*" of Resolution 1457 would have been respected, quod non (see supra).

5.

Resolution 1457 (2003) stated clearly:

> *"9. Stresses that the new mandate of the Panel should include:*
>
> - *Further review of relevant data and analysis of information previously gathered by the Panel, as well as any new information, including specifically material, provided by individuals and entities named in the previous reports of the Panel, in order to verify,*

reinforce and, where necessary, update the Panel's findings, ***and/or CLEAR parties named in the Panel's previous reports, with a view to adjusting accordingly the lists attached to these reports;***

11. Invites, in the interests of transparency, individuals, companies and States, which have been named in the Panel's last report to send their reactions, with due regard to commercial confidentiality, to the Secretariat, ***no later than 31 March 2003,*** *and requests the Secretary-General to arrange for the publication of these reactions, upon request by individuals, companies and States in the report of 15 October 2002, as an attachment to this report,* ***no later than 15 April 2003;***

12. Stresses the importance of dialogue between the Panel, individuals, companies and States and ***requests in this regard that the Panel provide to the individuals, companies and States names, upon request, all information and documentation connecting them to the illegal exploitation of the Democratic Republic of the Congo's natural resources,*** *and requests the Panel to establish a procedure to provide the Member States, upon request, information previously collected by the Panel to help them take the necessary investigative action, subject to the Panel's duty to preserve the safety of its sources, and in accordance with United Nations established practice in consultation with the United Nations Office of Legal Affairs."*

Following this resolution of the Security Council parties **(again)** asked the United Nations and especially the Panel of Experts to be provided with such documentation and / or information in order to be able to present such defense before

the deadline of the 31st of March 2003 and in respect of Resolution 1457 (2003) and this was refused.

Not-limited, the following fax messages and e-mails were send by legal counsel to request such documentation and / or information: fax messages 29 January 2003 (3), e-mail 29 January 2003 (6), e-mail 6 February 2003 (4), e-mail 26 February 2003, e-mail 10 March 2003, e-mail 26 February 2003, e-mail 10 March 2003, fax messages 10 March 2003 (3), e-mail 11 March 2003 (3), e-mail 14 March 2003, fax message 17 March 2003, e-mail 17 March 2003 (2).

Legal counsel of client visited New York to meet with one Panel member, Mr. Bruno Chiemsky on the 19 March 2003, but was further denied any documentation or information at this occasion.

The Panel of Experts did not respect the Resolution of the Security Council 1457 (2003), namely to respect the deadline to provide documentation and / or information regarding parties mentioned in the Report and this before the 31st of March 2003 so consequently parties mentioned had nothing to defend themselves on at this time.

Parties mentioned did respect Resolution 1457 (2003).

It is clear that the Panel of Experts also did not respect Resolution 1457 after the extension it obtained from the Security Council.

There is a difference between providing real information and documentation where in reality the Panel was only interested

in being able to **formally** allege that they were willing to respect the Resolution 1457, quod non.

Giving no information and/or documentation at all because a man is unable to travel to Nairobi, Kenya on a very short notice is unacceptable, moreover when representation by a lawyer is presented but simply refused and also many other channels to provide some information were open (See above).

6.

Parties have even presented themselves before the Public Prosecutors in Belgium and this strictly on their own initiative in order to ask the Public Prosecutor to start an investigation in order to clear their names. An unorthodox request to be provided with justice.

The Panel of Experts never provided any documentation and / or information to such judicial authority in Belgium or any other country.

Parties are not only confronted with a despicable method of "*naming and shaming*" but were even refused to verify any information and / or documentation and thus to be informed promptly of the causes of the accusations made against them and a fortiori to have any adequate time or facilities for the preparation of any accurate reply.

I further refer to article 8, 10 and 11 of the Universal Declaration of Human Rights and especially article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms:

"*Article 6 - Right to a fair trial*

1. In the determination of his civil rights and obligations or any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

a. ***to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;***
b. ***to have adequate time and facilities for the preparation of his defence;***
c. *to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;*
d. *to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses*

on his behalf under the same conditions as witnesses against him;

e. *to have the free assistance of an interpreter if he can not understand or speak the language used in court."*

The Panel of Experts put all such elementary rights aside. (Cfr. Infra)

7.

The United Nations has only asked the Panel of Experts - and given a mandate to the Panel of Experts - to evaluate possible actions to be taken by the Security Council and to advise the Security Council on recommendations to be made to the international community, meaning countries, in order to ensure the evolution of the peace process in the Democratic Republic of the Congo.

The Panel never received a mandate to attack private business people and / or companies.

The Panel of Experts also never even had the possibility to compel testimony or documents and never had any judicial authority whatsoever and recognised this explicitly.

This means that the Panel of Experts at most received some dubious information on a strictly voluntary basis and did not have any means to verify whatsoever with regard to such information that was given to them.

8.

Such judicial authority was given to the Belgian Senate's commission "*Great Lakes*", which in Belgium obtained similar authorities as a Judge of Instruction to perform an investigation.

Following the 3 reports of the Panel of Experts, this Belgian Investigating Commission of the Senate conducted an investigation and published its findings with a report on the 20th February 2003.

Parties were summoned and appeared before this Senate's Commission a.o. to give a declaration under oath.

After investigation, the Senate's Commission concluded the following:

> *"The Commission has noted that several companies and / or persons, mentioned in the UN-report, have not been heard on forehand, which jeopardizes their rights of defence.*
>
> *Moreover the work of the Commission was made more difficult in view of the fact that she was not provided with any evidence and / or indications that should support the allegations in the UN-reports."* (Free translation, report Senate Commission dd. 20 February 2003, p. 2 § 1)

Also:

"From the beginning of her activities, the Commission had been confronted with the lack of legal, sufficient and workable definitions in the UN-reports of the concepts "legal and illegal" and "plundering"." (See report Belgian Senate's Commission dd. 20 February 2003, p. 7 § 5.1)

Also:

"Economic activities or trade with companies or persons in each of the territories in the DRC can in itself not be considered illegal." (See report Senate's Commission dd. 20 February 2003, p. 7 § 5.3)

"The Commission asks the Government to insist with the United Nations to come to a more clear description of the concepts legal and illegal and of plundering of natural resources and this in view of further activities of the United Nations Panel." (See report Senate's Commission, p. 7 § 5.9)

And:

"The Commission has noted that the United Nations only issued embargos against countries like Angola, Sierra Leone and Liberia, and therefore trade with other countries and even conflict areas must be considered as legal." (See report Senate's Commission, p. 19 § 3.1.6.)

And:

"With regard to the allegations formulated by the UN Panel against a number of diamond companies that OECD-guidelines would not have been respected, the Commission states that (not withstanding the fact that only concerns guidelines that are not enforceable) such guidelines are not even applicable for the diamond companies concerned because they can not be considered as multinationals. Above that, the Commission is of the opinion that the UN Panel must clarify which aspects of guidelines would not have been respected." (See report Senate's Commission, p. 22 § 3.2.1)

And in conclusion:

"In this context and based on the available information, the Commission has to conclude that with regard to the concerned diamond companies no legal, incriminating elements can be found and that these diamond companies have acted in good faith." (See report Belgian Senate's Commission, p. 23)

The Belgian Senate's Commission also noted that the Panel of Experts was clearly not infallible, since the Panel of Experts already needed to clear names of companies they named and shamed without hesitation before:

"The Commission, based on available information, joins the consideration mentioned in the second UN-report where it is stated that the company (Arslanian Frères) was mentioned unjustly in the first report and therefore has cleared this company." (See report Belgian Senate's Commission, p. 26, § 3.2.5.)

9.

Parties mentioned have as their most important activity the trade and / or the import and the export of diamonds.

They have had until the publication of the Report an irreproachable reputation in the diamond trade and this for many years.

The diamond trade in Antwerp is concentrated on a relatively small surface, being in practice 2 streets (Hoveniersstraat and Schupstraat) where all well-established companies that do business in diamonds are situated. It is a matter of common knowledge as well as an economic fact that the diamond trade in Antwerp (or elsewhere) fundamentally relies on confidence and *"hear-say"*.

A good reputation in the diamond trade is essential, even vital, for every diamond dealer or every company that does business in diamonds.

The reputation of parties mentioned has been irrevocably damaged by the Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and other forms of Wealth of the Democratic Republic of the Congo dd. 8 OCTOBER 2002 (S/2002/1146).

10.

In contradiction to what is stated or suggested in this report parties mentioned emphasize not to be conflict diamond

dealers, or to be members of *"clans "* or associated with such clans, criminal organizations or criminal activities or to have done any illegal or unethical activity.

Every appearance of their name in the media with regard to the report - even while defending their name - only results in more unnecessary publicity and additional damage to the reputation.

Several international newspapers and other news channels have picked up the name of parties mentioned in respect to the report and negative publicity is unavoidable and beyond repair.

Banks have revoked and/or threatened to withdraw credit lines and major clients suspended all further transactions, afraid to be connected to someone so strongly accused by the United Nations where in fact the Panel is not the United Nations.

11.

It is a basis principle in any democratic state that persons who are accused have minimum rights to defend themselves.

In the report of the Panel of Experts, made public on the Internet, people and companies were named and accused without being heard and even without any reasonable possibility to reply.

For the record it can be noted, as general rules, that:

a) Parties mentioned have a respected business and do not deal in conflict diamonds or conduct any illegal or illegitimate activities;

b) Parties mentioned were not allowed to defend themselves with a full knowledge of the facts and minimal to be able to know some motive or fact that would make a minimum of control possible, quod non;

c) To avoid arbitrariness it is necessary that some concrete facts and elements on which the allegations would be based, are at least retrievable, quod non;

d) Declaring without any proof or fact that parties mentioned would be conflict diamond dealers and or criminals or have done something illegal or unethical should be considered as an act of slander and defamation.

Parties mentioned refute categorically the baseless accusations and inform that:

a) They never received dialogue or information and/of documentation from the Panel of Experts.
b) Have never been heard or invited by the Prosecutor in Belgium, any police organization or any other authority
c) Have never been involved in any criminal or illegal activity
d) Have a legitimate business operation asserted by documents from the High Council and the Diamond Office in Antwerp, checked for the origin by the customs authorities and forwarded to the HRD Diamond Office Antwerp (Diamond High Council).

e) Are situated in the heart of Antwerp working closely with the most respectable representatives in the Diamond business

12.

It is unlikely that when a person or company stands accused by a Panel Report, a democratic Government would give support unless it is sure of your correctness whereas all imports from diamonds are legal and a full audit can be provided.

The definition of a conflict diamond itself could be rendered meaningless. According to the World Diamond Council a "conflict diamond" is a diamond imported in violation of law or resolutions of the United Nations, intended to end trade in diamonds extracted from "Conflict Regions". Obviously, having imported diamonds legally into Belgium and in accordance with UN resolutions makes a diamond not a conflict diamond according to the World Diamond Council or any other standard.

It should also be clear that parties mentioned are fully committed to the UN's position relating to conflict diamonds.

13.

Parties mentioned defend themselves with the firmness and the certitude of being wrongly accused.

It needs no argument that an enormous injustice is committed and it is a shame when, in the name of the United Nations, persons and companies are branded worldwide on the internet, merely based on rumors, false information or hearsay, without

any further interest in the accuracy of the information that is spread or the severe consequences for the people involved.

In such case arbitrariness rules and everyone that is pointed at is declared an outlaw without any further defense.

Parties mentioned are well aware that representatives of Member States to principal and subsidiary organs of the United Nations enjoy immunity from legal process in respect of words spoken or written and all acts done in capacity as such a representative. Parties mentioned are also aware that, moreover, the United Nations also enjoys immunity from every form of legal process. That having been said, parties mentioned only requested the opportunity to present their defense, to have their arguments verified and to be confronted directly with any information that would be held against them and this was simply denied in breach with Resolution 1457 (2002) that ordered the Panel to do so.

14.

In the report of the Panel of Experts it is nowhere stated which *"evidence"* would allow to utter accusations against parties mentioned.

At most one is rendering a self-account, where one should accept that only information would have been used that has been confirmed by more than one source?

The Panel calls a summary of the allegations "evidence"…?

This way nothing more than *"belief"* is requested for the used working-method, without the necessary effort to show what

"reliable" information would be at hand and what verifiable criteria would have been used.

It is also to easy to us the term *" known to intelligence services and police organizations "*
(See report § 34 page 9)

Of which services and organizations is the Panel talking about?

Parties mentioned have been living and working in Belgium for years at the same address in Antwerp, together with their family.

Parties mentioned have a clean criminal record, have never been accused of anything illegal by the authorities and have never been invited to give any declaration or even answer any question by such authorities.

15.

There is a clear contradiction in the report.

If the information would be correct - which it is not - there would at least have been a disturbance in some way by Belgian or other authorities and at least someone would have been interrogated, accused or under investigation (if not arrested), quod non.

If the investigation of such criminal activities however, were to be held so secretive that they are only known to " intelligence services " it would be incredible to publish such

secret information worldwide on the Internet in a report that is read by millions of people.

Parties mentioned can only base themselves on the certainty that they have not infringed any embargo or law and that they did not, neither directly, nor indirectly, nor in person, nor as a middleman, nor by means of companies or third parties, not in any other way of form dealt in so-called conflict diamonds or have been associated with any criminal or unethical activity.

A legal adage states *"negativa non sunt probanda"*, which means that negative facts cannot be proven.

The above-mentioned adage is based on the idea that it is practically impossible to give evidence of a negative fact.

How can someone (or a company) proof that he (it) did <u>not</u> do something during a well-defined period of time?

The only possibility that is available is to proof an opposite positive fact or a series of positive facts that can exclude the negative fact.

If parties mentioned would have been contacted before the publication of the report on the Internet, damage could have been avoided and parties mentioned would have been able to show on forehand that the information the Panel obtained was clearly false.

The Panel was invited on numerous occasions to provide a copy of <u>one</u> record of proof against parties mentioned, that cannot

exist for the simple reason that parties mentioned did not do what they are accused of.

16.

Parties mentioned have to suppose - for the time being - that the Panel should have received some information that has led to the mentioning of their names in the report.

Parties mentioned have to accept - for the time being - that wrong and false information has been provided, by which the Panel could have been misled and bad intent cannot be excluded where such negative publicity favors some competitors.

Parties mentioned however are left in the dark and did not receive any information and/documentation and/or explanation from the Panel.

It is in the interest of the Panel to test the truthfulness and the reliability of the information received together with the requestors and based upon the data they provide.

On at least two occasions a Panel of Experts made wrong accusations in a report and a correction had to be made after presentation of the defense:

17.

In the first report, published on the Internet, of this Panel of Experts regarding the Democratic Republic of Congo dd. 12 April 2001 (S/2001/357) a firm ARSLANIAN FRERES NV was heavily accused as follows:

*"ARSLANIAN, **the conflict diamond dealers** in the Eastern Democratic Republic of the Congo, provided on average 2.000.000$ per year, each directly to the Congo desk …"*
(See Report Panel of Experts of 12 April 2001, p.29, nr. 127)

After ARSLANIAN FRERES NV defended itself on these accusations the name was completely removed from the final report and, on the contrary, in annex IV of the report the Panel of Experts expresses its **deep appreciation and gratitude** towards ARSLANIAN FRERES for having assisted the Panel of Experts in making the report (see annex IV report S/2002/1146)

ARSLANIAN FRERES was wrongfully accused and a correction was made, much to the honor of the Panel of Experts.

18.

The same happened with a firm called MACKIE DIAMONDS in Antwerp.

In the original report of the Panel of Experts regarding Angola it was stated:

"76. Azet Mohammed, who holds a British protected citizen passport, was arrested in March 2001. He was arrested for possession of a parcel of diamonds worth $100,000. Mohammed was described as the "lieutenant" of diamond dealer Ali Mackie Fouad Abess, of Mackie Diamonds in Antwerp, a Lebanese diamond dealer who was also a dealer in Sierra Leonean diamonds. Mackie, who holds a United States passport, began working in Angola in late 1999. He was deported from Angola for possession of false papers when Mohammed was arrested. Mackie's activities in Angola are under investigation."

(See letter Chairman Mr. Richard Ryan, Security Council Committee dd. 16.04.2001, p.20, nr. 76)

Also these accusations were proven completely false and - after presentation of the defense - were corrected in a following report.:

"Correction

221.Contrary to the information contained in paragraph 76 of the Mechanism's previous report (S/2001/363), there is no person know as Ali Mackie Fouad Abess. Mr. Ali Mackie, who has never been known by name or nickname as Fouad Abess, does not have any relationship with Mohammed Azet. Mr. Ali Mackie, a Belgian citizen of Lebanese origin, is the owner and director of Mackie Diamonds in Antwerp. He does not possess a United States passport. He was neither arrested in, nor deported from, Angola. While Mr. Mackie had business interests in Angola prior to 2000, the Angolan authorities have not reported any investigation into his activities in Angola."

(See UN report on Angola S/2001/966 dd. 12 October 2001, p.43, par. 221)

At least these two clear examples prove that there certainly is a possibility that wrongful accusations were uttered and corrections are necessary.

19.

In spite of the damage that was done parties mentioned wanted to accept - for the time being - that the Panel acted in good faith and that it only concluded upon false, faulty or wrong information that has been given to them, if such information exists.

To avoid arbitrariness it is necessary that the concrete facts and elements on which the allegation is based, are at least retrievable, quod non

At least parties mentioned should have been allowed to defend themselves with a full knowledge of the facts and minimal to be able to know some motive that would make a minimum of control or contradiction possible, quod non

I presume every reasonable man should agree that arbitrariness is unacceptable.

From a normal cautious and careful person it can be expected that he seeks the truth by controlling his facts as much as possible and that he refrains from spreading rumors that could damage a party if he is not able to show the truthfulness of such rumors

20.

Declaring in public without being able to provide any proof or fact that parties mentioned would be involved in illegal or unethical activities would constitutes a crime of slander and defamation according to standards of many legislation, not only Belgian law.

Parties mentioned could accept that the original goal of the Panel is a noble goal that deserves all means and attention but on the other side this does not mean that all elementary principles of law can be put aside and companies or persons can be branded based only on mere malicious rumors and allegations.

In such case we honestly speak of a witch-hunt, were arbitrariness rules and everyone that is pointed at is declared an outlaw without any further defense.

The term witch hunt is not farfetched if there is no control on the investigation, if there is an absolute immunity for the prosecutors, a complete anonymity regarding alleged sources of information, no necessity to present evidence, no possibility of contradiction, no possibility to defend or reply and in the end the accused is asked to accept what is to him only a pattern of slander and defamation.

The Panel should not be allowed to hide behind the so-called safety of it sources and therefore being capable of providing no evidence whatsoever and to consider itself unbound by any due process of law.

When in the medieval age the Inquisition wanted to protect a witness who was ready to testify that he/she had seen a suspect communicating with the devil the witness was allowed to appear in court with a mask, or hood, over the face. This was how the court heard the "truth", and the witness was protected from the evil eye of the witch who might take revenge after being burned at the stake.

What can not be allowed, if we do not want to turn back the clock 500 years, under any circumstances is the permanent concealment of the identity of so-called witnesses, neither the refusal to present any document or the content of any declaration whatsoever and this on *"grounds of confidentiality"*

One can ask what kind of witness would exist that can give the Panel confidential information and then can refuse to answer further questions as to how such information was obtained or even the accused to verify the content of a declaration.

Going on the statements of the Panel itself as a rule this could be an undercover agent, who has been necessarily operating illegally in foreign countries in order to collect information that cannot be obtained by regular means.

It is clear that such "*evidence*" can not be excepted as valid and such clandestine witnesses can not be believed at all, more over where it is not even certain that the Panel is basing itself only on information received from undercover agents but could also exclusively be receiving very dubious information from competitors of parties concerned or any other party with an interest to damage parties concerned.

The court in Antwerp, which can be quoted as follows, gave a relevant judgment:

> *"By the public prosecutor no further information is given, nor is there a document rendered regarding the fact. In a former cession already a postponement was given in order to obtain permission from the State's Security Services to deliver documents in order to be able to judge the related, serious facts. For one reason or another no documents are rendered.*
> ***It is unacceptable that certain facts are quoted by the State's Security Services without producing any document of whatsoever to substantiate this allegation and without any right of the concerned person to defend himself.***

Such an attitude witnesses an unacceptable disapproval for the rights of defense. As much unacceptable is the fact that the court would be expected to judge a person without the judge even being able to render any control or to be able to judge a fact that is quoted against the concerned person…" (See Rb. Eerste Aanleg Antwerp, 12 February 2001, ongepubl., Seber / OM).

It is of course unacceptable that any Panel would be able to give unfounded allegations from a position of complete anonymity and immunity towards companies and persons and that these accused companies of persons should be sanctioned or even threatened in their existence, without any appropriate right of defense, especially if this is done under the name of the United Nations.

21.

Parties mentioned were ready to be confronted with each document, declaration or any other information that would have given rise to the mentioning of their name and the incorrect accusations coupled hereto and from which confrontation it would have been crystal clear that the requestors have been wrongly accused.

In breach with Resolution 1457 (2003) of the Security Council the Panel of Experts refused to provide any documentation and /or information as it was ordered to by the Security Council to do before 31 March 2003 and did not comply with it, not to the letter and certainly not to the spirit of the Resolution.

The only conclusion can be that the name of parties concerned should be cleared and an explicit correction should be published.

Yours Sincerely,
For the requestors, their Attorney at law,

Mr. M. De Block
Antwerp, 27th of May 2003

Reaction No. 29

DE BEERS
A DIAMOND IS FOREVER

28 May 2003

Your Excellency,

Final Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo

I should like to thank you and the members of your Panel for the courtesy extended to the De Beers' representatives who met recently with the Panel in Nairobi. The Panel set out its reasons for including De Beers in the list (Annex III of the Final Report) of business enterprises considered by the Panel to be in violation of the OECD Guidelines for Multinational Enterprises.

I emphasise at the outset that the De Beers Group has the highest regard for the United Nations and, as you may know, it always co-operates fully with the UN, not least in relation to humanitarian concerns. This has been recognised by the Secretary-General who, in January 2001 said: "*Private companies should be careful to act responsibly, in ways that improve the chances of peace, or at least do not fuel the continuation of conflict. De Beers has set an example, with its response to criticism of the diamond trade in Africa and its efforts to ensure that traders and consumers of diamonds will no longer unwittingly help to finance warlords*". I should add that the responsibility, to which Mr Annan refers, is one that the De Beers Group takes extremely seriously. De Beers was, of course, pleased to be able to assist the work of your Panel, appropriately acknowledged in Annex IV of the Final Report.

For these reasons, I have, with some regret, to inform you that the statement in the Panel's Report that De Beers was in breach of OECD Guidelines casts an unwarranted slur upon De Beers' reputation. It is an unfounded allegation, supported neither by any evidence nor explanation of the nature of any alleged breach. Moreover, our request to the Panel via the UN Secretariat, and further requests made by the United Kingdom Foreign Office between 16 October 2002 (when the Report was published) and 12 May 2003 (the date of the Nairobi meeting), elicited no response from the Panel.

However, as a result of the meeting on 12 May 2003, it has now been made apparent to us that your concerns relate to the alleged activities in the DRC of three clients (Sightholders) of the Diamond Trading Company, a member of the De Beers Group, rather than those of the De Beers Group itself.

The Panel informed the De Beers Group's representatives at the Nairobi meeting that De Beers was named in Annex III of its Report on the basis of information and documentation received by the Panel indicating that the three Sightholders have purchased rough diamonds from sources that encourage and contribute to the conflict in the DRC. The Panel was of the view that by maintaining its business relationship with these Sightholders through the Diamond Trading Company (DTC), De Beers has allegedly indirectly provided support to entities that are directly or indirectly involved in fuelling the conflict in the DRC.

The Panel indicated verbally its three primary areas of enquiry and we set out our response to each in turn:

1. What steps will De Beers take in relation to the activities of the Sightholders mentioned? To what extent was De Beers aware of the activities of the Sightholders and what remedial action will be taken?

   To address these questions in reverse order: We notified the Sightholders who were the subject of the Panel's findings once the Panel had explained its concerns to us. Moreover, we were concerned to do so in view of the commitment by both the DTC and its Sightholders to the Diamond Best Practice Principles, which we developed in order to take account of unacceptable practices (both as regards the public interest and the diamond industry), including that "the injury and hardship suffered by local populations (and the potential for it) when conflicts arise in diamond producing areas are unacceptable, as is seeking to profit from such conflicts". The Principles state unequivocally that we "are committed to operating our businesses in such a way that we neither engage in, nor encourage in any manner....buying and trading rough diamonds from areas where this would encourage or support conflict and human suffering". It is important to note in addition that we underpin this ethos by promoting the development of sophisticated systems by our clients precisely in order that they can minimise the likelihood of unwittingly acquiring diamonds from such sources.

As regards the first part of Question 1: We have been assured by the relevant Sightholders that all such buying activities were accompanied by the required official government documentation. It is important to state, however, that De Beers:

(i) does not and cannot exercise any form of management control or supervision of its Sightholders; and

(ii) had no knowledge of these activities, and has no knowledge of the rough diamond purchasing activities of its clients beyond their purchases from the DTC. Indeed, under DTC's agreement with and undertakings provided to the European Commission (pursuant to the consideration by the Competition Directorate of DTC's formal supply arrangements), there are strict limits upon the ability of DTC to require information about those aspects of its customers' commercial plans and operations which are viewed, under competition laws, as irrelevant to DTC's supply decisions.

However, all DTC's clients are expected to adhere to the DTC's Best Practice Principles and in light of your concerns and of these Principles, DTC will alert all its customers to be particularly vigilant with regard to the manner in which they conduct their rough diamond purchasing activities.

2. Are there other Sightholders active in buying diamonds from areas experiencing conflict?

   We have no knowledge of any such activity. All DTC Sightholders are fully aware of the provisions of the Kimberley Process, which came into effect in January 2003 and have recently reiterated their commitment to this process as part of their application to become Sightholders for the contract period July 2003 – July 2005.

3. Is De Beers able to provide the Panel with a list of its Sightholders?

   The DTC does not currently publish a list of its Sightholders for reasons of commercial confidentiality. However, with the permission of the company concerned, we would, of course, be prepared to assist the Panel in confirming that a particular company is, or is not, a Sightholder.

Your Excellency, De Beers is deeply concerned about the issues set out in the Panel's report, not least the impact these do or may have on the population of the DRC and the need for the restoration of the rule of law. De Beers is proud of its record in social investment and sustainable development in southern Africa and elsewhere. The diamond industry has already demonstrated the benefits that natural resources can provide (as in South Africa, Botswana and Namibia). In the case of the DRC, De Beers hopes to contribute to the rebuilding of its economy to the benefit of all its people.

In conclusion, we believe that there is no justification for attributing to De Beers conduct of which De Beers is innocent. With respect we request that all references to De Beers be deleted from the Panel's report and this response be attached to the Final Report and published in full.

Yours sincerely,

Rory More O'Ferrall
Director
Public and Corporate Affairs

Reaction No. 30

Billy Rautenbach
PO Box CY 1949
Causeway
Harare
Zimbabwe

May 30, 2003

Ambassador Mahmoud Kassem
c/o The United Nations Security Council
United Nations Headquarters
First Avenue at 46th Street
New York, NY 10017
USA

Excellency Mr. Ambassador,

RE: Security Council Resolution 1457 (2003): The Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth in the Democratic Republic of Congo (the "Panel")

I am writing in my personal capacity, as well as on behalf of Ridgepointe Overseas Developments, Ltd. ("Ridgepointe"), a company incorporated in the British Virgin Islands ("BVI") of which I am the principal. I provide this response pursuant to Security Council Resolution 1457 (2003) whereby the Council invited individuals, companies and States named in the Panel's Report of October 15, 2002 ("Final Report") to provide their reaction.

I note that neither I, nor Ridgepointe, figure on the lists of individuals or companies upon which the Panel has recommended the placing of restrictions. Further, neither Ridgepointe, nor the undersigned's activities in the DRC have been considered by the Panel in violation of the OECD Guidelines for Multinational Enterprises.

As you recall, representatives of Ridgepointe met on several occasions with the Panel during your preparation of the Final Report. In the order to counter the inaccuracies and misconceptions of the Panel's early reports in regard to our activities, our approach was to offer full transparency. We provided detailed and specific information, addressing head on each and every allegation levied against us, principally those contained in the Panel's report

of April 12, 2001 (Security Council Document S/2001/357) ("Report of April 2001"). We provided an eighty page report, documented with over two hundred exhibits. During our various meetings we discussed many of such documents directly with the Panel. The material provided by us to the Panel establishes beyond a doubt that:

- My family and I have been involved in the DRC since prior to 1990, essentially in the transport business; our involvement dates back many years prior to the war; our involvement in the DRC simply cannot be linked to a scheme to finance the war, as had been suggested;
- The purpose of our initial involvement in the mining sector in the DRC was to off-set the price of trucks and busses that I sold to the Government of the DRC for its reconstruction program; this activity began in March 1998, again well before the war; we have provided the Panel with all relevant documentation in regard to such activity, including contracts and details of all payments and off-sets;
- Ridgepointe's securing of its Mining Convention was a result of my success in the initial mining project which was based on the above offset arrangement, and my track record in the country, at a time when no other international investors were interested in taking any risks in the country;
- My appointment as Chairman of Gécamines was at the direct request of President Laurent Désiré Kabila based on my successes to date in the DRC;
- Ridgepointe invested heavily in the DRC pursuant to the terms of its Mining Convention; we have provided the Panel with lists of all the various elements of the investment;
- Ridgepointe's successes are a well established fact. Statistics from the Cobalt Development Institute validate our claim, which has not been matched since our termination.
- The Government of Zimbabwe has and never has had any interest in Ridgepointe in terms of equity, direct or indirect, and has never benefited in any manner from the activities of the company in the DRC; indeed we note that Zimbabwe did not intervene upon the termination of the Mining Convention to defend Ridgepointe or its activities.

It is with certain satisfaction that we note the Panel's decision in its Final Report that neither I, nor Ridgepointe, should figure on any of the lists of individuals or companies against which the Panel has recommended sanctions or considered to be (or to have been) in violation of the OECD Guidelines in regard to our activities in the DRC.

That having been said, and given that the Panel chose not to enter into any detail in regard to the facts that we presented, we take this opportunity to address the specific allegations contained in the Report of April 2001:

Paragraph 156 of the Report of April 2001

- *That the mining concessions were transferred to Ridgepointe "without apparent compensation"*

This is not the case as established to the Panel in the documents provided. Ridgepointe has shown details of its investments in the DRC pursuant to the terms of the Mining Convention. We have provided lists of assets purchased for the venture and abandoned in the DRC following termination of the venture, as well as details of the refurbishment of certain Gécamines facilities, including plant, notably the concentrators at Kakanda and Kambove and the Shituru Metallurgical Plant, but also hospitals and schools. We have provided details of each and every payment made under the terms of the Mining Convention, including the significant dividends paid to the Government. We have also provided documentation in regard to the company's plans for expanding its activities and investing capital that involved a partnership with a major international mining conglomerate.

- *Ridgepointe or my alleged involvement in the payment of Zimbabwean soldiers in the DRC*

We categorically deny any involvement in the payment of Zimbabwean soldiers. In our discussion with the Panel, we were presented with no concrete evidence of any such payments. We believe that such information was simply a malicious rumour which may have been fed to the Panel by sources wishing to harm us.

- *Mr. Mpoyo, the Congolese Minister, signed the Mining Convention on behalf of Ridgepointe*

We have established that this was simply not the case. The Mining Convention clearly shows that he signed on behalf of the Government of the DRC.

Paragraph 164-165 of the Report of April 2001

- *That Billy Rautenbach is associated with the KMC Group*

I deny that I am in any manner associated with the KMC Group and that I have any interest in their activities. Indeed, I have issued several demands to KMC in regard to the concessions that they now occupy and to which Ridgepointe continues to hold the original title deeds.

The Final Report makes reference at its paragraph 32 to the possible settlement of the claim that has been filed by Ridgepointe against the DRC. The report states that I informed the Panel that the Government of the DRC had offered Ridgepointe mining rights to the Gécamines concession of Shinkolobwe. This is not correct. I would like to briefly explain the background to the claim filed by Ridgepointe against the DRC.

In July 2000, having unsuccessfully petitioned the Government for several months for the reinstatement of its concessions and mining operation, Ridgepointe filed a claim to recover the amount of the investment that it had made in the country. The claim is currently pending before an arbitration panel under the rules of the International Centre for the Settlement of Investment Disputes ("ICSID"), part of the World Bank Group in Washington D.C.

The essence of Ridgepointe's claim is that the Mining Convention, pursuant to which it operated in the DRC, was unjustly terminated, virtually overnight and without notice. There was no due process and Ridgepointe was barely entitled to respond before its assets were seized and personnel forced from the country. Termination was based on an alleged technicality in regard to the incorporation of the vehicle for the joint venture. There was no allegation of impropriety, or a decision to terminate based on the company's performance.

At the time, Ridgepointe protested bitterly at such termination of its Mining Convention. It has since established that the termination was engineered by one of its commercial competitors keen to take over the concessions for itself. The termination was not the act of a sovereign state, as it would initially have appeared, but an act taken under the direct influence of private interests jealous of Ridgepointe's success and keen to exploit the very same concessions for its own gain. As set forth in the detailed figures provided to the Panel, between September 1998 and March 2000 the Ridgepointe joint venture became one of the most successful copper and cobalt mining operation the DRC has seen in recent years, exporting some 400 tonnes of cobalt a month at its peak. Statistics released by the Cobalt Development Institute show the downward spiral in cobalt production in the DRC since the termination of Ridgepointe.

It is correct that we have had positive feedback from the Government of the DRC in regard to the settlement of the claim. The Government has accepted that there was a misunderstanding and that it should be resolved amicably. However, there has not been any promise in regard to the award of any particular concession in compensation. At this point in time, various options are being considered. It is correct that Ridgepointe has informed the Government of the DRC that under any settlement scenario involving further mining activity, the company would fully respect and abide by all DRC legislation, including the country's new and recently implemented Mining Code. We are strongly encouraged by the latter which we believe will encourage investment, provide security, and above all a level playing field for all concerned.

We remain fully at the disposal of the Panel in regard to any further questions that it may have in regard to the above, or in regard to any of the material that we have provided. Respectfully submitted,

Very truly yours,

Billy Rautenbach

Reaction No. 31

COUDERT BROTHERS LLP
COPPENS VAN OMMESLAGHE & FAURÈS
AVOCATS

Le 4 juin 2003

Monsieur le Secrétaire Général,

Concerne: Groupe d'experts sur le pillage des ressources naturelles de la République Démocratique du Congo – Conseil de Sécurité – Résolution S/RES/1457 (2003)
N. réf.: 0616047.0001

Nous faisons référence à l'entrevue que le Panel d'experts de l'O.N.U. a réservée à Monsieur Jacques Van den Abeele en sa qualité de gérant de la société de droit belge Cogecom, et à nous-mêmes, le lundi 26 mai dernier à Nairobi.

Cette entrevue était axée sur les activités de négoce de la société Cogecom.

Nous avions, quant à nous, souhaité que cette réunion se tienne en exécution de la Résolution 1457/2003 du 24 janvier 2003 du Conseil de Sécurité, en insistant tout particulièrement sur les dispositions essentielles qu'elle contient, à savoir:

> « (...)
>
> *Passer en revue les données pertinentes et analyser les informations recueillies antérieurement par le Groupe ainsi que toutes informations nouvelles et notamment les renseignements fournis par des personnes ou des entités mentionnées dans ses précédents rapports afin de vérifier, confirmer et, au besoin, mettre à jour ses conclusions ou encore de disculper les parties mentionnées dans ses rapports dans le but de revoir en conséquence les listes annexées à ces rapports;*
>
> (...)

Procéder à une évaluation des activités de toutes les parties nommées dans ces rapports (...);

(...)

Inviter par souci de transparence, les particuliers, les entreprises et les États nommément mentionnés dans le dernier rapport du Groupe à faire parvenir au Secrétariat au plus tard le 31 mars 2003 (date limite prorogée jusqu'au 31 mai 2003 par la note S/2003/340 du Président du Conseil de Sécurité) *les observations qu'ils pourraient avoir à formuler en réponse, en tenant compte du secret commercial (...)*

Souligner l'importance du dialogue entre le Groupe et les particuliers, les entreprises et les États en priant à cet égard le Groupe de communiquer aux particuliers, aux entreprises et aux États visés qui en font la demande toute information les mettant en cause dans l'exploitation illégale des ressources naturelles de la République Démocratique du Congo; »

En exécution du troisième alinéa ci-dessus, nous avons remis, les 26 mars et 13 mai derniers, deux mémoires circonstanciés contenant une série d'informations et d'argumentations assorties de pièces justificatives qui démontrent le caractère légal de l'activité exercée par la société Cogecom et l'inadéquation de sa mention dans les annexes du Rapport final du Groupe d'experts (S/2002/1146), fût-ce même à l'Annexe III.

Nous espérions ainsi que la réunion du 26 mai 2003 nous aurait permis d'engager un dialogue constructif avec le Groupe d'experts, fait de transparence et d'échange de vues dans le respect formel des résolutions du Conseil de Sécurité.

Nous avons dû malheureusement constater, sur la base des propos échangés lors des entretiens, que:

- les mémoires que nous avions remis semblaient avoir été écartés de toute considération, sinon de toute lecture, de la part du Groupe d'experts;

- certains experts, pris sans doute par un agenda chargé, manifestaient un souci constant de quitter au plus vite la salle (Monsieur Melvin Holt);

- d'autres experts semblaient se désintéresser de l'objet de l'entretien.

Ce constat ne constituerait évidemment qu'un reproche mineur de circonstances s'il n'avait pas été accompagné de faits qui nous paraissent beaucoup plus graves, à savoir que:

- malgré notre demande expresse, le panel d'experts s'est refusé à nous communiquer les sources des documents ou informations qui pourraient mettre en cause la SPRL Cogecom;

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- par contre, le panel nous a invité à signer un document sous référence EXPNATDRC/Cogecom relatant une version totalement inexacte des activités de la société Cogecom, qu'une lecture attentive de nos mémoires aurait pu corriger d'emblée. Vu son contenu, nous n'avons signé ce document que sous toutes réserves et pour seule réception.

- en annexe à ce document étaient joints six autres documents dont deux répertoriés comme suit:

  « Letter from RDC/G (Secrétariat Général) to le Chef du département des finances, budget et portefeuille, dated 21 November 2000 », comprenant deux pages.

  Il s'agit en fait de deux documents distincts,

  - l'un étant une lettre censée émaner du Secrétaire Général du RCD Goma, Monsieur Azarias Ruberwa Manywa, revêtue de deux cachets des 21 et 22 novembre 2000, référence 0456/RCD/SG/2001,

  - et l'autre étant en fait la réponse à la première, à savoir « Lettre de Monsieur Jean-Marie Emungu Ehumba, Chef de département des finances, budget et portefeuille de la République Démocratique du Congo, référence 405DPFBP-RCD/JJRB/JME/2001 », qui porte un cachet du 5 septembre 2001.

  Ces deux documents figurent en annexe à la présente (Annexes I et II).

Nonobstant le fait que nous avons attiré l'attention des experts sur les anomalies formelles que ces deux documents présentaient et leur contradiction flagrante par rapport au contenu des mémoires, informations, lettres, documents divers que nous avons produits, le Groupe d'experts a maintenu qu'il y trouvait la preuve selon laquelle la société Somigl, avec laquelle Cogecom aurait traité des affaires, avait spécifiquement pour but et pour objet de participer aux efforts de guerre du Rwanda contre la République Démocratique du Congo.

Nous avons confirmé nos réserves auprès du Groupe d'experts par lettre du 30 mai dernier (Annexe III), en soulignant certaines anomalies évidentes qu'un examen visuel élémentaire aurait permis de déceler.

Devant la gravité des considérations émises par le Groupe d'experts, sur base d'informations provenant, selon lui, de « *source sûre* », nous avons immédiatement interpellé les autorités du RCD Goma afin de nous enquérir de la portée de ces documents dès lors qu'ils étaient en contradiction formelle avec les renseignements que ces mêmes autorités nous avaient donnés lors de notre mission d'information au Kivu en avril 2003 (voir pièce 31 visée dans notre mémoire du 13 mai 2003).

La réponse de ces autorités fut immédiate:

> LE DOCUMENT PRODUIT PAR LES EXPERTS CONSTITUE UN FAUX GROSSIER DESTINÉ À CONFONDRE LES AUTORITÉS LOCALES ET LES ACTEURS ÉCONOMIQUES DU KIVU EN METTANT À LEUR CHARGE UNE LOGIQUE DE GUERRE ENTRE LE RWANDA ET LA RÉPUBLIQUE DÉMOCRATIQUE DU CONGO, EN CONTRADICTION AVEC LES ACCORDS DE LUSAKA.

Ces autorités nous ont remis une copie de la lettre authentique répertoriée 405DPFBP-RCD/JJRB/JME/2001.

Ce document figure en Annexe IV et vous pourrez constater qu'il a un tout autre objet que celui du document produit par le Groupe d'experts.

D'un autre côté, vu la gravité des faits, Monsieur Ruberwa, Secrétaire Général du RCD et actuel Vice-Président de la République Démocratique du Congo, nous a fait savoir, sur notre interpellation, qu'il n'était pas l'auteur du courrier produit sous son nom par le Group d'experts, lequel constitue un faux en écritures manifeste.

Il a d'ailleurs expressément confirmé auprès du Groupe d'experts par une lettre circonstanciée qu'il leur a adressée le 2 juin dernier, avec copie à vous-même.

*

*   *

CONCLUSIONS – DEMANDE

1. Les circonstances décrites ci-dessus nous obligent à mettre directement en cause la qualité de l'expertise et des rapports du Groupe d'experts de l'O.N.U., ce dernier usant de faux pour tenter de confondre notre client en violant les règles les plus élémentaires de la contradiction et de la transparence propres à toute mission d'enquête.

Nous ne nous expliquons pas, notamment, pourquoi les experts n'ont même pas jugé utile de s'assurer eux-mêmes de l'authenticité des documents qu'ils nous ont produits et qu'ils détenaient depuis de nombreux mois, ne fût-ce qu'en interrogeant les auteurs présumés de ces lettres, dont Monsieur Ruberwa.

COUDERT BROTHERS LLP
COPPENS VAN OMMESLAGHE & FAURÈS

2. Dès lors qu'il est à présent établi que le Groupe d'experts s'est fondé sur des faux pour mettre la SPRL Cogecom en cause dans son Rapport final S/2002/1146, nous sommes en droit d'exiger que nous soient communiquées l'origine et les sources de ces documents.

3. Nous demandons également que le nom de la SPRL Cogecom soit immédiatement retiré de la liste d'entreprises constituant l'Annexe III, vu l'absence de tout fondement et de véracité des affirmations et imputations qui avaient été faites à son encontre, celles-ci reposant exclusivement sur de faux documents.

4. Notre cliente entend par ailleurs déposer plainte pour faux et usage de faux à charge des auteurs des deux documents incriminés et, le cas échéant, à charge des experts si ceux-ci persistent à dissimuler leurs sources.

5. Les amalgames, contradictions, erreurs – maintenant assortis de faux – que les rapports contiennent à tous les stades de leur élaboration ont malheureusement conduit la société Cogecom à être mise en cause en Belgique et son gérant poursuivi, sur la base de ces mêmes rapports, dans le cadre d'une procédure pénale.

La SPRL Cogecom a en outre été contrainte de mettre un terme à son activité à la suite du contenu des rapports du Groupe d'experts, sa réputation et son honnêteté commerciale ayant été directement mises en cause.

Aussi bien, notre cliente formule-t-elle, par la présente, une demande de dommages et intérêts à charge de l'O.N.U., évaluée, en l'état actuel du dossier, à 50.000.000 USD.

Nous vous remercions de bien vouloir prendre acte de ces demandes et de nous indiquer, dans les délais appropriés, la suite que vous y réserverez.

Nous vous prions, Monsieur le Secrétaire Général, de croire à l'assurance de notre haute considération.

Herman Lemaire

Francis Goffin

Reaction No. 32

Félicien RUCHACHA BIKUMU

Goma, le 20 novembre 2002

Réponse au rapport S/2002/1146 des experts sur l'exploitation illégale des ressources naturelles en République Démocratique du Congo

Excellence,

J'ai l'honneur de m'adresser à votre auguste personne pour vous faire part de ma réponse au rapport établi par les experts sur l'exploitation illégale des ressources naturelles en République Démocratique du Congo.

En effet, mon nom, celui de mon associée (Dr Gertrude KITEMBO), ainsi que celui de notre entreprise (CONGO HOLDING DEVELOPMENT COMPANY sprl) sont mentionnés dans les annexes audit rapport pour que des restrictions financières et de voyage nous soient imposées ; bien qu'aucun de ces trois noms n'ai été mentionné dans le rapport proprement dit. Notre préoccupation est de savoir les raisons pour lesquelles ces experts proposent ce genre de sanctions alors que notre entreprise, qui exerce des activités commerciales locales en vendant sur les marchés de Uvira, Bukavu et Goma, du ciment produit à Kalemie ; ne s'occupe pas des activités d'exploitation des ressources naturelles.

Du reste, ce rapport ne répond à aucune des questions fondamentales qui étaient posées car il n'apporte aucune preuve, ni sur l'exploitation illégale des ressources naturelles (notamment le mode d'exploitation et les lois que cette exploitation viole) ni sur l'utilisation des recettes de cette exploitation pour le financement de la guerre,

Ce rapport contient aussi beaucoup d'informations erronées qu'une simple critique des sources aurait permis d'éviter

Ayant personnellement beaucoup souffert de cette guerre, je suis surpris par l'attitude de ces experts.

En effet, dès le déclenchement de la guerre le 2 août 1998 :

- j'ai perdu sans indemnité ni préavis mon emploi à la GECAMINES où j'exerçais des fonctions de direction depuis plus de quinze ans ; mon dernier poste étant celui de Directeur Technique du Groupe Centre ;
- tous mes biens ont été pillés par les autorités civiles et militaires de Kabila ;
- mon épouse et mes quatre enfants mineurs ont été détenus pendant onze mois ;
- j'ai été détenu pendant onze mois dont cinq à la prison de haute sécurité de Buluo et deux semaines dans les cachots militaires de Lubumbashi considérés comme des antichambres de la mort ;
- j'ai été soumis à la torture, à la diète noire et à divers autres traitements dégradants et humiliants ;
- seize membres de ma famille qui étaient des élèves–officiers à Kamina ont été assassinés par le général Joseph Kabila en compagnie du colonel Kokolo ;
- j'ai été libéré sans procès ni jugement ;

Au vu de ce qui précède, ce ne sont pas des sanctions qu'il fallait proposer à mon endroit, mais plutôt des dédommagements pour tous les préjudices subis et dont je souffre encore aujourd'hui.

Dans l'espoir d'avoir apporté des éclaircissements au contenu du rapport ci-haut cité, je vous prie d'agréer, Excellence, l'expression de ma très haute considération.

Félicien RUCHACHA BIKUMU
Consultant International
Spécialiste du Secteur minier

Reaction No. 33

Karl Heinz Albers International

Following attachments to e mail dated 22 May 2003 from Lindsay Hardman of KHA (lindsayhardman@kha-international.com):

- Note on Somikuvu
- Note on NMC Métallurgie - Rwanda

SOMIKIVU - Democratic Republic of Congo

Introduction

SOMIKIVU was created in 1982 to produce pyrochlore concentrate from the Lueshe deposit in the eastern part of Zaire (now known as the Democratic Republic of Congo). Due to the characteristics of the Lueshe deposit, SOMIKIVU was, and still is, exclusively involved in the mining and processing of pyrochlore (the niobium-bearing mineral), not tantalite. The main shareholders of SOMIKIVU were, and still are, Gesellschaft für Elekromeltallurgie (70%) and the State of Zaire (now Congo). Further, Mr Karl-Heinz Albers was formally elected as *Administrateur-Délégué* (Managing Director) of SOMIKIVU, a position he still holds, and as a result, holds one share.

Background

Production started in 1984 on a pilot scale basis. The plant was extended in 1986 and 1989 and production reached its peak in 1992. In June/July 1993, SOMIKIVU was forced to stop production and declared *force majeure* due to the violent ethnic conflict in the Region. The Board and shareholders of SOMIKIVU decided to suspend production only, the mine itself was never officially closed. During early 1994, the mine was put under care and maintenance and was secured until 2000 by ex-employees of SOMIKIVU who worked on a part-time basis, maintaining and guarding it. The salaries for the workers during this period of non-production, were paid for by the shareholders until 1997 and from private funds belonging to the management thereafter. During 1997, the Ministry of Mines declared that the *force majeure* was no longer applicable and asked the management of SOMIVIVU to re-start the operation. SOMIKIVU and the Minister of Mines, at that time, agreed upon a work programme to ensure that the mine could re-open. The first step of this work programme was the rehabilitation of the road from Rwindi to Lueshe (40km) to enable essential machinery and equipment to be brought to the mine, whilst at the same time allowing fuel and supplies in. This work was unfortunately slowed down and partly stopped due to the uprising of political events in 1998. The work programme was eventually completed and operations restarted on 14th July 2000 with the majority of the previous workers from 1993.

Legal Status

It must be noted that the Convention Minière was accepted by RCD Goma as a legal basis for re-starting operations but it was also essential to re-open the mine in order to maintain the mining rights of the deposit, as the Congolese law did not make provision for the freezing of the deposit, whilst *force majeure* was no longer in place. It was at this time, that Kibasa Maliba, the then Minister of Mines, illegally negotiated with Krall for the sale of the mining deposit, resulting in the signing of a Convention whereby Kibasa's family would own 5% of the shares. Krall arrived in Goma to try and implement his Convention and is still trying to do so even today. The management of SOMIKIVU has good reasons to believe that Krall was somehow supported by Treibacher AG in trying to take away the deposit from SOMIKIVU.

SOMIKIVU continues to operate under a *Convention Minière*, a ratified legal agreement, that was adopted by the Parliament on 21st August 1981 and signed by decree (no. 82-020) by the President of the Republic of Zaire on 9th March 1982. According to this agreement, and for the duration of the agreement, SOMIKIVU is granted certain tax exemptions, for example, no tax on import and export duties but must pay a number of fees, namely, a fee for imports/exports, a fee for the mining concession, a fee for the *Division des Mines Provenciale*, an administrative fee for the import/export licence and a fee to the O.C.C. (*Office du Contrôle Congolais*) for the weighing, sampling and analysing of each lot).

Political situation
There have been several attempts to force SOMIKIVU to pay taxes to RCD Goma that SOMIKIVU has always resisted which have even resulted in stopping the plant and therefore not exporting. The first time was in September 2000, then in May/June 2001 and the last attempt was at the end of December 2002/January 2003. It should be noted that this last attempt cost SOMIKIVU around US$1 million.

Social developments
SOMIKIVU continues to provide a number of support programmes to its employees and local communities of Lueshe. There now exists a large medical station and a primary and secondary school for both its employees and local people from the surrounding villages. There are currently 620 pupils attending the schools who follow the same educational programme as in all schools throughout the DRC. SOMIKIVU has also put in place a programme for professional training at its factory, garage, mechanical and electrical workshops. The students are taught theory and practical work by SOMIKIVU's experts, with many students going on to work for SOMIKIVU. Furthermore, in order to create labour, SOMIKIVU has given start-up help to the local people to build up their own companies in the fields of construction and civil engineering.

At the same time, SOMIKIVU is still contributing to the rehabilitation of the local infrastructure following the disastrous effects of the volcano on surrounding roads and water pipelines.

Detailed planning is also under way for the construction of a hospital, of a village to include two hundred houses with sewage, water and electricity, of additional school buildings and for the development of fish farms and plantations. Funding is being sought in co-operation with non-profit organisations.

SOMIKIVU serves as an excellent model example of how to successfully run and operate a company, according to the guidelines of the OECD. SOMIKIVU would be pleased to co-operate with the UN Panel in any way it can to promote business and community development within the Region.

NMC Métallurgie - Rwanda

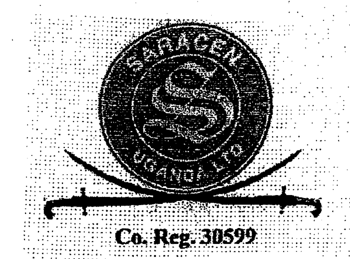
NMC Métallurgie SARL is company based in Kigali, Rwanda, and is a 100% subsidiary of Niobium Mining Company Limited ("NMC"), a mining company based in London specialised in investing in and operating niobium, tantalum and associated minerals operations worldwide. NMC is a 100% subsidiary of KHA International AG. In September 2001, the Government of Rwanda, who owned the Karuruma tin smelter, located near Kigali, sold it as part of its privatisation programme, in the form of an open tender. NMC participated in this tender and was awarded the contract, with the final acquisition papers being signed in May 2002. NMC Métallurgie was created to acquire the smelter.

NMC's offer to acquire the smelter included a three –phase investment programme consisting in (i) the rehabilitation of the smelter to produce tin by converting cassiterite produced in Rwanda, and to toll-convert tin on behalf of European and African companies; (ii) the addition of a mineral treatment plant to separate cassiterite from other minerals and the addition of a ferro-alloy plant to produce ferro-niobium and/or ferro-wolframite; and (iii) the upgrade of the ferro-alloy plant to produce high-grade ferro-alloys.

Work on phase 1 started in May 2002 and was completed in February 2003. NMC Métallurgie conducted a series of production test and is now starting full-scale production. In addition to the rehabilitation of the tin line, NMC Métallurgie invested in a state-of-the-art laboratory for process control and samples analysis, operated under an exclusive agreement, by A.H. Knight, a world-class sampling and analysis company.

NMC Métallurgie is registered with the Rwanda Investment Promotion Agency ("RIPA"), whose main objectives are to promote investment opportunities with local and foreign investors, to facilitate business development and export-oriented production, by providing tax incentives and assistance with training and recruitment of local workers.

When in full-production for phase 1, NMC Métallurgie will employ more than 50 people from the local population and three expatriates. Additional workers will be needed for phase 2 and phase 3.



Uganda Office
Plot 25 Price Charles Drive
PO Box 22693
Kampala
Uganda

May 28, 2003

The Chairman,
Panel of Experts on Illegal Exploitation of
Natural Resources and other forms of Wealth
In the Democratic Republic of Congo

Attn: Ambassodor Mahmoud Kassem

Dear Sir,

RE: RESPONSE TO ALLEGATIONS AGAINST MR. HECKIE HORN AND SARACEN (U) LTD CONTAINED IN REPORT OF THE PANEL OF EXPERTS ON ILLEGAL EXPLOITATION OF NATURAL RESOURCES AND OTHER FORMS OF WEALTH OF THE DRC.

1. INTRODUCTION

On 21st May 2003, I appeared before the Panel of Experts on illegal exploitation of Natural Resources and other forms of wealth of the DRC and was served with a letter dated 21st May 2003 Ref. Saracen, signed by the Chairman of the Panel Ambassador Mohmoud Kassem. A copy of the letter is attached and marked **"A"**. I wish to respond to the allegations contained therein, both in my individual capacity and as Managing Director of Saracean (U) Ltd.

I also wish to refer to the note by the President of the Security Council S/2003/340 of 24th March 2003 inviting individuals named in the panel's last report to send their reactions.

Before I respond to the specific allegations, allow me to point out that when I met the Panel, despite my request, I was not availed any evidence, documentary nor oral. I was informed that it was against their policy to disclose such evidence and their sources. The position is rather interesting since the Panel, in its report Paragraph 1.7 states,

> ***"... Nevertheless, the Panel collected well-substantiated and independently corroborated information from multiple sources. These knowledgeable sources provided documents and/or eye-witness***

observations. It is this type of information – consisting mostly of documentary evidence that the Panel has relied on its report."

We have not had the benefit of scrutinizing and testing the authenticity of such evidence. We would have hoped that as a matter of justice and fair play, such pieces of evidence should have been availed to us to enable us adequately prepare our defence to the allegations being levelled against the company and myself. This is important especially since the panel admits relying heavily on such evidence in arriving at its conclusions.

All in all, however, I will respond to the best of my ability, to the allegations, truthfully and honestly.

2. ALLEGATIONS

It is stated in the letter **"A"** and paragraph 102 of the Panel Report that the Panel obtained reliable information connecting myself with members of the Elite Network (Ugandan controlled area of the North Eastern region of the DRC) consisting of government officials, military officers and business entrepreneurs involved in the illegal exploitation of the Natural resources. It is further alleged that I am a key Partner of Lt. General Saleh in supporting the creation, financing and training of a Paramilitary force designed to facilitate commercial activities of UPDF officers following the withdrawal of UPDF troops from North-Eastern region of DRC. The Panel however does not say where the paramilitary training is taking place.

3. RESPONSE

3.1 When I met the Panel, I categorically denied being involved in any covert operations with Lt. General Salim Saleh, either in training and financing the alleged paramilitary force or in anyway concerning the DRC. Inspite of this denial which was acknowledged by the Panel in their report, the panel went ahead and included the same allegations in the report, without indicating whether they believed it or not.

3.2 I wish to categorically deny being part of any Elite Network or participating in any way with government officials, Military Officers or business entrepreneurs in the alleged illegal exploitation of the Natural resources in DRC.

I wish to further state that I have never been to any part of the Democratic Republic of Congo in my life. This is important to emphasize because in the Panel report, under paragraph 103, it is stated,

"Panel sources report that Lt. General Saleh and Mr. Horn consulted President Joseph Kabila to obtain support for this covert operation."

I have attached photocopies of my Passport in testimony of the fact that I have never travelled to the Democratic Republic of Congo. The same is marked **"B"**.

3.3 It is true that I am the Managing Director of Saracen Uganda Ltd. Saracen Uganda is a limited liability company duly registered in accordance with the law in the Registrar of Companies in Uganda. It employees 1300 staff and is purely a commercial security company. It has two shareholders: Saracen International with 75% and Special Services Ltd 25%. It is therefore false as alleged that Salim Saleh is a shareholder in Saracen Uganda. I attach hereto a copy of the Memorandum and Articles of Association of Saracen Uganda Ltd, marked **"C"**.

The principal business of the company entails the provision of security guard services in Uganda and in that regard the company hires, and acquires necessary firearms, ammunitions, security vehicles, communication equipment among others. The company is also authorised by the Uganda Police to conduct in house routine training of its guards. It is not authorised nor capable of conducting any military or paramilitary training.

Saracen (U) Ltd has never conducted any business in the DRC since its inception. The nearest to the DRC that the company has been to is along the banks of Semuliki River where the company was providing security services to Heritage Oil & Gas (U) Ltd that is carrying out oil exploration. Semuliki River is on the border between Uganda the DRC.

The manpower involved in the said contract were:

(a) Under Transit Site

1 Project Manager, 1 Safety Officer, 1 Project Security Supervisor, 1 Expatriate Medical Doctor, 2 Radio operators/Controllers, 10 Security guards and 3 Dog Handlers.

(b) Operation phase

1 Project Manager/Safety Officer, 2 Expatriate Security Officers, 2 Security Supervisors, 1 Expatriate Medical Doctor, 1 Expatriate Medical ordinary, 2 Radio operators, 25 Security Guards and 6 Dog handlers.

Unfortunately, as a result of the allegations contained in the Panel report, Heritage Oil & Gas (U) Ltd decided to cancel the said Contract. This decision was communicated in a letter dated 27th October 2002. Paragraph 2 thereof states:

"It has come to our notice through the Press that certain allegations have been aimed at Saracen and its directors by the United Nations Panel headed by Ambassodor Mahmoud Kassem. We are in no doubt that these allegations are groundless.

However, as you are aware Heritage is in delicate negotiations with Democratic Republic of Congo to obtain Oil concessions within the Albert Garden on the DRC side of the Uganda border. Because of these negotiations, the Senior Management of Heritage feels that it would hamper these negotiations by having Saracen as its Security Consultant."

The letter is marked **"D"**.

The company has therefore been affected by the unfounded allegations and the Company is determined to see the whole matter through and will definitely be seeking legal redress for the damage suffered. We attach copies of our financial statements for the benefit of the Panel marked **"E"**. We request that these statements be excluded from the rest of the documents to be published.

Training of a paramilitary force or any other force can only be done in a disclosed place. The Panel however fails to disclose where the alleged paramilitary training is taking place. Such information is necessary and at least, the company should be entitled to know whether the Panel visited the said places and what their findings were. This was not the case.

4. OBSERVATIONS

4.1 The methodology framework of the report is deceptive.

In paragraph 1.7 of the report the Panel states that it managed to collect well – substantiated and independently corroborated information from Multiple Sources. The Panel goes on to state that these knowledgeable sources provided documents and/or eyewitness observations. It then concludes that it is this type of information, consisting mostly of documentary evidence that the Panel has relied on its report. The Panel is now the investigator and the judge. The accused in this case Saracen and myself are however denied the opportunity to study, analyse and test the authencity of such evidence. Where is justice ! The methodology adopted no doubt offends the principles of Natural justice, which demand that the accused should know the full details of the case against him/her, in order to adequately and objectively respond.

4.2 The alleged evidence against the company and myself if at all it exists, is baseless and unfounded and can best be categorised as hearsay.

4.3 The company has suffered grave financial consequences as a result of the unresearched and biased allegations. These events cannot go unchallenged. We demand that the panel produces all the alleged evidence implicating the company

and myself in the alleged illegal activities, and the same be subjected to the normal procedure of credibility test.

4.4 We are prepared to continue to co-operate with the Panel in any way possible provided the Panel operates in a transparent manner. It is also important that the panel explains as to why it didn't believe my earlier testimony and decided to continue with the publication of the baseless allegations despite the clear and unequivocal denial.

In Conclusion, we demand that the allegations be dropped. We pledge to assist the panel should they require any clarifications.

Yours faithfully,

Heckie Horn
MANAGING DIRECTOR

Reaction No. 35

AvienT

13th June 2003

Statement following Meeting between Avient and the Expert Panel

Avient has met with representatives of the Expert Panel, and clarified each item in the report which makes reference to Avient.

Avient will continue to co-operate with the Expert Panel and to adhere to OECD guidelines in order to be removed from the Annex III list.

A R H Smith
On behalf of Avient

From the desk of Mr. Marc De Block
Attorney at law
Antwerp - Belgium

FINAL ATTACHMENT TO REPORT PANEL OF EXPERTS ON DRC

On behalf of AHMAD DIAMOND CORPORATION NV

To the attention of
SECURITY COUNCIL UNITED NATIONS
PANEL OF EXPERTS
UNITED NATIONS
EXPNATDRC/UNON

REF: Resolution 1457/2003
AT THE REQUEST OF:

1. **Mr. Imad AHMAD**, with chosen domicile at the office of his counsel and

2. a company according to Belgian law, the company **NV AHMAD DIAMOND CORPORATION**, with registered office at Schupstraat 13-15, 2018 Antwerp

(Hereinafter called "*parties mentioned*")

represented by Mr. Marc De Block, attorney at law in Belgium, having his office Vlaamse Kaai 54-57 at 2000 Antwerp, Belgium.

1.

The Panel of Experts on the Illegal Exploitation of Natural Resources and other Forms of Wealth in the Democratic Republic of the Congo was appointed on request of the Security Council dated **2 June 2000** (S/REST/2000/20)

The original mandate of the Panel was:

- to follow up on reports and collect information on all activities of illegal exploitation of natural resources and other forms of wealth of the Democratic Republic of the Congo, including the violation of the sovereignty of that country;
- to research and analyze the links between the exploitation of the natural resources and other forms of wealth in the Democratic Republic of the Congo and the continuation of the conflict;
- to revert to the Council with recommendations. (S/2001/357, p. 3)

A first report was published the **12th of April 2001** (S/2001/357).

The Panel's mandate was extended until the **30th November 2001** (S/2001/951).

A second report was published the **13th November 2001** (S/2001/1072).

A third report was published the **16th October 2002** (S/2002/1146).

The Security Council took a new resolution on the **24th January 2003** (Resolution 1457/S/RES/1457/2003)

Following the text of Resolution 1457 (2003) of the Security Council dd. 24/01/2003, the Panel of Experts was explicitly requested ***"to provide parties concerned, all information and documentation, connecting them to the illegal exploitation of the Democratic Republic of the Congo's natural resources and/or as being in contravention with OECD-guidelines".***

A first deadline was set before the **31st of March 2003**, whereas the Panel would then have to publish our reactions as an attachment to their report, no later than 15th of April 2003.

Arguments however had to be deposited without having received any information and/or documentation from the Panel before the 31st of March.

Just before expiration of the deadline of 30th of March 2003 the Panel of Experts asked and obtained (for itself) an extension from the Security Council to provide such information / documentation, this time before the end of May 2003.

Following this Resolution 1457 - the defense notes on behalf of parties concerned, were already sent **on 24th of March with request to publish these before 15 April 2003 as annex to the Report in accordance with Resolution 1457.**

In view of the fact that we didn't receive any information and / or documentation - and this despite numerous requests - from the Panel - and this in breach with the resolution - the defense remained limited.

As from the same day, the **24 March 2003** a Note was published on the Internet by the President of the Security Council stating:

> "Following consultations among the members of the Security Council, they have decided, in order to give more time to the individuals, companies and States wishing to send to the Secretariat their reactions to the findings of the last report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo (S/2002/1146), to extend the deadlines set out in paragraph 11 of Security Council resolution 1457 (2003) of 24 January 2003. Those individuals, companies and States named in the Panel's last report are invited to send their reactions to the Secretariat no later than 31 May 2003, in order for these reactions to be published no later than 20 June 2003."

The Panel **did not attempt to visit or hear people and companies they named and shamed in their reports and this since 2nd June 2000 or being a period of almost three years…**!

According to the Decisions of the Court of Human Rights (Hof Mensenrechten) (3e afd.) nr. 29731/96, 13 February 2001 (Krombach / Frankrijk), the right of everyone charged to be effectively defended and represented by a lawyer, assigned officially if need be, is fundamental and according to Articles 6 §§ 1 and 3 (c) of the Convention on Human Rights has the right to defend himself in person or… **through legal assistance of his own choosing.**

Invitations by the Panel to finally come to Nairobi, Kenya was first sent 9th April 2003 and this to come to Nairobi between 14 and 30 April 2003!

The Panel had to know - and was even informed explicitly - that many or most diamond offices in Belgium were closed for the Easter Holidays in this exact period and would not reopen until 28 of April 2003.

10 to 12 people had to stop all their normal activities and had to rush to Nairobi from all over the world on request of the Panel and this in such a period, on such short notice after the Panel had three years to invite, hear and or see anyone, anywhere they liked.

Translators, they were told, they could find for themselves and it was mentioned that also "*lawyers were welcome*".

The Panel stated further:

> ***"The degree of cooperation already developed between…and the Panel suggests that this meeting could produce positive outcomes, including arriving quickly at a mutually satisfactory solution to this matter…"***

Stating that " *information* " could only be handed over for review in face-to-face meetings made such proceedings a charade. Under such pretext no reasonable control or contradiction of information was reasonably possible and it entitled the Panel to show whatever they wanted and to give any explanation they want in a report afterwards on what they so-called presented as information.

My clients did not want to be made part of such kind of simulation, as it appeared only intended to give the Panel a formal opportunity to write in a final Report that all people

and companies were invited, seen and heard and confronted with " evidence" in face to face meetings, while in reality no such real possibility of verification, contradiction and/or marginal control on any information was rendered.

Representation by an attorney or any other means of communication were rejected and this despite efforts from the Belgian Ministry of Economic Affairs to send information / documentation through their diplomatic services.

The Panel stated on forehand that no documentation or information would be given to anyone unless they personally came to Kenya. The Panel would not grant any meetings with legal representation unless one or more of his clients in person accompanied the attorney.

All parties concerned were obliged to travel in person to Nairobi as from the 23rd of April 2003.

Very limited appointments were granted and to each party was given approximately 5 to 10 minutes time, although the Panel alleges it speed "*5 hours*" in total on 9 different parties…

Relevant is that no explanation whatsoever was given by the Panel and the Panel handed over its so-called "*evidence*".

What the Panel called "*evidence*" could be regarded as completely ridiculous if the case was not so tragic.

Each party was given **one** (1) page, typed by the Panel of Experts itself and only containing a **summary** of the accusations itself.

So the Panel wants to present as evidence a summary made by itself of the accusations it made.

Parties concerned were asked to sign this document after which they could receive a copy.

If they refused to sign, they could not get a copy.

It is clear that until today the Panel of Experts has not respected the resolutions of the Security Council and has not provided any information and/of documentation as it was requested to do by the Security Council.

The composition of the Panel was changed during the reports and different people and companies were named and shamed in the different reports.

2.

All reports of the Panel of Experts were immediately published on the Internet and therefore considered to be authoritative and trustworthy, although the United Nations itself had no control over the content of such reports.

Banks in Belgium closed accounts, the R.C. President Kabila fired several government officials implicated by a Panel and third parties like the Beers asked clients not to deal with companies accused in the report of the Panel of Experts.

The result for people and companies mentioned was devastating.

The Panel of Experts never published or rendered <u>any</u> evidence or even information on which it based its findings and this

despite numerous requests by parties mentioned in the report, by governments, national prosecutors and even a Senate Committee.

Only at the very last moment a document was created and given and this only to enable the Panel to say that "*documentation*" was given, quod non.

The Panel of Experts never gave any information about general guidelines it would have is used for making such reports or required standards of proof it utilized.

The practice of "*naming and shaming*" is unworthy for the United Nations and did not even follow elementary guidelines or general principles of law or ethics.

The Panel of Experts never even set out any ethical guidelines it might have used or created any mechanism of communication to consult with member states, other organizations or parties mentioned in their reports.

The Panel did not attempt to visit or hear people and companies they named and shamed in their reports and many parties rightfully expressed their outrage that the Panel of Experts:

* failed to contact parties mentioned or even to ask for their comments and
* never publicized any shred of evidence leading to their conclusions or made such evidence available to parties concerned, or at least to member states and their judicial authorities.

These comments still stand today.

It should be clear to any reasonable man that grave allegations should be backed by high evidentiary standards, quod non.

The Panel of Experts did not use such standards.

There was not even a procedure that allowed people or companies that had been accused to even know what kind of evidence was used where the Panel of Experts just preferred to publicly tarnish and destroy the reputation of a great number of companies and people.

As it was mentioned from the outset by the Panel itself, the principle of naming and shaming was "*high on their priority list*" and this without <u>any</u> explanation, <u>any</u> reasonable standard or <u>any</u> right of defense.

The danger of accusations made without a due process are clear and such accusations not only damage the people and companies involved, but also undermine the credibility of the United Nations past, present and future panels.

The company AHMAD DIAMOND CORPORATION was <u>not even mentioned</u> at all in the third report of the Panel of Experts.

Without any motivation whatsoever and without any mentioning in the report itself, the name of the company AHMAD DIAMOND CORPORATION was still mentioned without further comment in Annex 1 of the third report S/2002/1146, namely the list of companies on which the Panel recommend to place financial restrictions!

The name of the President of the company, Mr. AHMAD Imad was also mentioned in Annex 2, being the list of persons for whom the Panel recommends a travel ban and financial restrictions.

All this without even spending one word with regard to the company AHMAD DIAMOND CORPORATION or with regard to Mr. AHMAD Imad in the report itself!

Also after Resolution 1457 the Panel never gave any explanation on why and how OECD-guidelines would have been broken by AHMAD DIAMOND CORPORATION.

3.

The practice of "*naming and shaming*" as the Panel of Experts used it contravenes to the following articles in the Universal Declaration of Human Rights:

PREAMBLE

> ***Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,***
> ***Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,***
> ***Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,***

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

…

Article 2.

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

… .

Article 6.

Everyone has the right to recognition everywhere as a person before the law.

Article 7.

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 10.

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11.

(1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense.

(2) No one shall be held guilty of any penal offence on account of any act or omission, which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12.

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks.

The refusal to give any opportunity to be heard on forehand and to give any defense afterwards or to be provided with any documentation and/or information is a flagrant violation of the above articles of the Universal Declaration of Human Rights.

It is also in violation of similar articles in the Pact of New York and the European Treaty on Human Rights.

4.

Immediately upon publication of the report, the Panel of Experts was requested numerous times to give even the smallest opportunity to present a defense.

The legal counsel requested an opportunity at any given place, time and date to present a defense and to be provided with any documents and / or information on the following occasions:

* fax messages 28 October 2002 (6)
* fax messages 6 November 2002, fax to United Nations 7 November 2002, fax to United Nations 13 November 2002 (3)
* E-mail 21 November 2002, e-mail 25 November 2002, visit New York 18 November 2002, e-mail 3 December 2002, e-mail 10 December 2002

Parties mentioned never received any documentation and / or information or any reasonable opportunity to present their defense before the Panel of Experts.

Only at the last moment the Panel mad a futile attempt to enable itself tot state that "*the letter*" of Resolution 1457 would have been respected, quod non (see supra).

5.

Resolution 1457 (2003) stated clearly:

> *"9. Stresses that the new mandate of the Panel should include:*
>
> - *Further review of relevant data and analysis of information previously gathered by the Panel, as well as any new information, including specifically material, provided by individuals and entities named in the previous reports of the Panel, in order to verify, reinforce and, where necessary, update the Panel's findings,* ***and/or CLEAR parties named in the Panel's previous reports, with a view to adjusting accordingly the lists attached to these reports****;*
>
> *11. Invites, in the interests of transparency, individuals, companies and States, which have been named in the Panel's last report to send their reactions, with due regard to commercial confidentiality, to the Secretariat,* ***no later than 31 March 2003****, and requests the Secretary-General to arrange for the publication of these reactions, upon request by individuals, companies and States in the report of 15 October 2002, as an attachment to this report,* ***no later than 15 April 2003****;*
>
> *12. Stresses the importance of dialogue between the Panel, individuals, companies and States and* ***requests in this regard that the Panel provide to the individuals, companies and States names, upon request, all information and documentation connecting them to the illegal***

exploitation of the Democratic Republic of the Congo's natural resources*, and requests the Panel to establish a procedure to provide the Member States, upon request, information previously collected by the Panel to help them take the necessary investigative action, subject to the Panel's duty to preserve the safety of its sources, and in accordance with United Nations established practice in consultation with the United Nations Office of Legal Affairs."*

Following this resolution of the Security Council parties **(again)** asked the United Nations and especially the Panel of Experts to be provided with such documentation and / or information in order to be able to present such defense before the deadline of the 31st of March 2003 and in respect of Resolution 1457 (2003) and this was refused.

Not-limited, the following fax messages and e-mails were send by legal counsel to request such documentation and / or information: fax messages 29 January 2003 (3), e-mail 29 January 2003 (6), e-mail 6 February 2003 (4), e-mail 26 February 2003, e-mail 10 March 2003, e-mail 26 February 2003, e-mail 10 March 2003, fax messages 10 March 2003 (3), e-mail 11 March 2003 (3), e-mail 14 March 2003, fax message 17 March 2003, e-mail 17 March 2003 (2).

Legal counsel of client visited New York to meet with one Panel member, Mr. Bruno Chiemsky on the 19 March 2003, but was further denied any documentation or information at this occasion.

The Panel of Experts did not respect the Resolution of the Security Council 1457 (2003), namely to respect the deadline

to provide documentation and / or information regarding parties mentioned in the Report and this before the 31st of March 2003 so consequently parties mentioned had nothing to defend themselves on at that time.

Parties mentioned did respect Resolution 1457 (2003).

It is clear that the Panel of Experts also did not respect Resolution 1457 after the extension it obtained from the Security Council.

There is a difference between providing real information and documentation or just pretending to give such information and documentation where in reality the Panel was only interested in being able to **formally** allege that they respected the Resolution 1457, quod non.

Giving a *"summary"* of allegations is not giving any information and/or documentation at all.

6.

Parties have even presented themselves before the Public Prosecutors in Belgium and this strictly on their own initiative in order to ask the Public Prosecutor to start an investigation in order to clear their names. An unorthodox request to be provided with justice.

The Panel of Experts never provided any documentation and / or information to such judicial authority in Belgium or any other country.

Parties are not only confronted with a despicable method of "*naming and shaming*" but were even refused to verify any

information and / or documentation and thus to be informed promptly of the causes of the accusations made against them and a fortiori to have any adequate time or facilities for the preparation of any accurate reply.

I further refer to article 8, 10 and 11 of the Universal Declaration of Human Rights and especially article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms:

> *"Article 6 - Right to a fair trial*
>
> *1. In the determination of his civil rights and obligations or any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.*
>
> *2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.*
>
> *3. Everyone charged with a criminal offence has the following minimum rights:*

a. ***to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;***
b. ***to have adequate time and facilities for the preparation of his defence;***
c. *to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;*
d. *to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;*
e. *to have the free assistance of an interpreter if he can not understand or speak the language used in court."*

The Panel of Experts put all such elementary rights aside. (Cfr. Infra)

7.

The United Nations has only asked the Panel of Experts - and given a mandate to the Panel of Experts - to evaluate possible actions to be taken by the Security Council and to advise the Security Council on recommendations to be made to the international community, meaning countries, in order to ensure the evolution of the peace process in the Democratic Republic of the Congo.

The Panel never received a mandate to attack private business people and / or companies.

The Panel of Experts also never even had the possibility to compel testimony or documents and never had any judicial authority whatsoever and recognised this explicitly.

This means that the Panel of Experts at most received some dubious information on a strictly voluntary basis and did not have any means to verify whatsoever with regard to such information that was given to them.

8.

Such judicial authority was given to the Belgian Senate's commission "*Great Lakes*", which in Belgium obtained similar authorities as a Judge of Instruction to perform an investigation.

Following the 3 reports of the Panel of Experts, this Belgian Investigating Commission of the Senate conducted an investigation and published its findings with a report on the 20th February 2003.

Parties were summoned and appeared before this Senate's Commission a.o. to give a declaration under oath.

After investigation, the Senate's Commission concluded the following:

> *"The Commission has noted that several companies and / or persons, mentioned in the UN-report, have not been heard on forehand, which jeopardizes their rights of defence.*
>
> *Moreover the work of the Commission was made more difficult in view of the fact that she was not provided with any evidence and / or indications that should*

support the allegations in the UN-reports." (Free translation, report Senate Commission dd. 20 February 2003, p. 2 § 1)

Also:

"From the beginning of her activities, the Commission had been confronted with the lack of legal, sufficient and workable definitions in the UN-reports of the concepts "legal and illegal" and "plundering"." (See report Belgian Senate's Commission dd. 20 February 2003, p. 7 § 5.1)

Also:

"Economic activities or trade with companies or persons in each of the territories in the DRC can in itself not be considered illegal." (See report Senate's Commission dd. 20 February 2003, p. 7 § 5.3)

"The Commission asks the Government to insist with the United Nations to come to a more clear description of the concepts legal and illegal and of plundering of natural resources and this in view of further activities of the United Nations Panel." (See report Senate's Commission, p. 7 § 5.9)

And:

"The Commission has noted that the United Nations only issued embargos against countries like Angola, Sierra Leone and Liberia, and therefore trade with other countries and even conflict areas must be considered as legal." (See report Senate's Commission, p. 19 § 3.1.6.)

And:

> *"With regard to the allegations formulated by the UN Panel against a number of diamond companies that OECD-guidelines would not have been respected, the Commission states that (not withstanding the fact that only concerns guidelines that are not enforceable) such guidelines are not even applicable for the diamond companies concerned because they can not be considered as multinationals. Above that, the Commission is of the opinion that the UN Panel must clarify which aspects of guidelines would not have been respected."* (See report Senate's Commission, p. 22 § 3.2.1)

And in conclusion:

> *"In this context and based on the available information, the Commission has to conclude that with regard to the concerned diamond companies no legal, incriminating elements can be found and that these diamond companies have acted in good faith."* (See report Belgian Senate's Commission, p. 23)

The Belgian Senate's Commission also noted that the Panel of Experts was clearly not infallible, since the Panel of Experts already needed to clear names of companies they named and shamed without hesitation before:

> *"The Commission, based on available information, joins the consideration mentioned in the second UN-report where it is stated that the company (Arslanian Frères) was*

mentioned unjustly in the first report and therefore has cleared this company." (See report Belgian Senate's Commission, p. 26, § 3.2.5.)

9.

Parties mentioned have as their most important activity the trade and / or the import and the export of diamonds.

They have had until the publication of the Report an irreproachable reputation in the diamond trade and this for many years.

The diamond trade in Antwerp is concentrated on a relatively small surface, being in practice 2 streets (Hoveniersstraat and Schupstraat) where all well-established companies that do business in diamonds are situated. It is a matter of common knowledge as well as an economic fact that the diamond trade in Antwerp (or elsewhere) fundamentally relies on confidence and *"hear-say"*.

A good reputation in the diamond trade is essential, even vital, for every diamond dealer or every company that does business in diamonds.

The reputation of parties mentioned has been irrevocably damaged by the Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and other forms of Wealth of the Democratic Republic of the Congo dd. 8 OCTOBER 2002 (S/2002/1146).

10.

In contradiction to what is stated or suggested in this report parties mentioned emphasize not to be conflict diamond dealers, or to be members of *"clans "* or associated with such clans, criminal organizations or criminal activities or to have done any illegal or unethical activity.

Every appearance of their name in the media with regard to the report - even while defending their name - only results in more unnecessary publicity and additional damage to the reputation.

Several international newspapers and other news channels have picked up the name of parties mentioned in respect to the report and negative publicity is unavoidable and beyond repair.

Banks have revoked and/or threatened to withdraw credit lines and major clients suspended all further transactions, afraid to be connected to someone so strongly accused by the United Nations where in fact the Panel is not the United Nations.

11.

It is a basis principle in any democratic state that persons who are accused have minimum rights to defend themselves.

In the report of the Panel of Experts, made public on the Internet, people and companies were named and accused without being heard and even without any reasonable possibility to reply.

For the record it can be noted, as general rules, that:

a) Parties mentioned have a respected business and do not deal in conflict diamonds or conduct any illegal or illegitimate activities;

b) Parties mentioned were not allowed to defend themselves with a full knowledge of the facts and minimal to be able to know some motive or fact that would make a minimum of control possible, quod non;

c) To avoid arbitrariness it is necessary that some concrete facts and elements, on which the allegations would be based, are at least retrievable, quod non;

d) Declaring without any proof or fact that parties mentioned would be conflict diamond dealers and or criminals or have done something illegal or unethical should be considered as an act of slander and defamation.

Parties mentioned refute categorically the baseless accusations and inform that:

a) They never received dialogue or information and/of documentation from the Panel of Experts.
b) Have never been heard or invited by the Prosecutor in Belgium, any police organization or any other authority
c) Have never been involved in any criminal or illegal activity
d) Have a legitimate business operation asserted by documents from the High Council and the Diamond Office in Antwerp, checked for the origin by the customs authorities and forwarded to the HRD Diamond Office Antwerp (Diamond High Council).

e) Are situated in the heart of Antwerp working closely with the most respectable representatives in the Diamond business

12.

It is unlikely that when a person or company stands accused by a Panel Report, a democratic Government would give support unless it is sure of your correctness whereas all imports from diamonds are legal and a full audit can be provided.

The definition of a conflict diamond itself could be rendered meaningless. According to the World Diamond Council a "conflict diamond" is a diamond imported in violation of law or resolutions of the United Nations, intended to end trade in diamonds extracted from "Conflict Regions". Obviously, having imported diamonds legally into Belgium and in accordance with UN resolutions makes a diamond not a conflict diamond according to the World Diamond Council or any other standard.

It should also be clear that parties mentioned are fully committed to the UN's position relating to conflict diamonds.

13.

Parties mentioned defend themselves with the firmness and the certitude of being wrongly accused.

It needs no argument that an enormous injustice is committed and it is a shame when, in the name of the United Nations, persons and companies are branded worldwide on the internet, merely based on rumors, false information or hearsay, without any further interest in the accuracy of the information that is spread or the severe consequences for the people involved.

In such case arbitrariness rules and everyone that is pointed at is declared an outlaw without any further defense.

Parties mentioned are well aware that representatives of Member States to principal and subsidiary organs of the United Nations enjoy immunity from legal process in respect of words spoken or written and all acts done in capacity as such a representative. Parties mentioned are also aware that, moreover, the United Nations also enjoys immunity from every form of legal process. That having been said, parties mentioned only requested the opportunity to present their defense, to have their arguments verified and to be confronted directly with any information that would be held against them and this was simply denied in breach with Resolution 1457 (2002) that ordered the Panel to do so.

14.

In the report of the Panel of Experts it is nowhere stated which *"evidence"* would allow to utter accusations against parties mentioned.

At most one is rendering a self-account, where one should accept that only information would have been used that has been confirmed by more than one source?

The Panel calls a summary of the allegations "evidence"…?

This way nothing more than *"belief"* is requested for the used working-method, without the necessary effort to show what *"reliable"* information would be at hand and what verifiable criteria would have been used.

It is also to easy to us the term " *known to intelligence services and police organizations* "
(See report § 34 page 9)

Of which services and organizations is the Panel talking about?

Parties mentioned have been living and working in Belgium for years at the same address in Antwerp, together with their family.

Parties mentioned have a clean criminal record, have never been accused of anything illegal by the authorities and have never been invited to give any declaration or even answer any question by such authorities.

15.

There is a clear contradiction in the report.

If the information would be correct - which it is not - there would at least have been a disturbance in some way by Belgian or other authorities and at least someone would have been interrogated, accused or under investigation (if not arrested), quod non.

If the investigation of such criminal activities however, were to be held so secretive that they are only known to " intelligence services " it would be incredible to publish such secret information worldwide on the Internet in a report that is read by millions of people.

Parties mentioned can only base themselves on the certainty that they have not infringed any embargo or law and that they did not, neither directly, nor indirectly, nor in person, nor as a middleman, nor by means of companies or third parties, not in any other way of form dealt in so-called conflict diamonds or have been associated with any criminal or unethical activity.

A legal adage states *"negativa non sunt probanda"*, which means that negative facts cannot be proven.

The above-mentioned adage is based on the idea that it is practically impossible to give evidence of a negative fact.

How can someone (or a company) proof that he (it) did <u>not</u> do something during a well-defined period of time?

The only possibility that is available is to proof an opposite positive fact or a series of positive facts that can exclude the negative fact.

If parties mentioned would have been contacted before the publication of the report on the Internet, damage could have been avoided and parties mentioned would have been able to show on forehand that the information the Panel obtained was clearly false.

The Panel was invited on numerous occasions to provide a copy of <u>one</u> record of proof against parties mentioned, that cannot exist for the simple reason that parties mentioned did not do what they are accused of.

Providing a summary of allegations, made up by the Panel itself, and handing over one additional document, an official import license for one shipment, is no evident whatsoever.

This meets only the letter of the Resolution 1457, not the spirit!

16.

Parties mentioned have to suppose - for the time being - that the Panel should have received some information that has led to the mentioning of their names in the report.

Parties mentioned have to accept - for the time being - that wrong and false information has been provided, by which the Panel could have been misled and bad intent cannot be excluded where such negative publicity favors some competitors.

Parties mentioned however are left in the dark and did not receive any information and/documentation and/or explanation from the Panel.

It is in the interest of the Panel to test the truthfulness and the reliability of the information received together with the requestors and based upon the data they provide.

On at least two occasions a Panel of Experts made wrong accusations in a report and a correction had to be made after presentation of the defense:

17.

In the first report, published on the Internet, of this Panel of Experts regarding the Democratic Republic of Congo dd. 12

April 2001 (S/2001/357) a firm ARSLANIAN FRERES NV was heavily accused as follows:

"*ARSLANIAN, **the conflict diamond dealers** in the Eastern Democratic Republic of the Congo, provided on average 2.000.000$ per year, each directly to the Congo desk …*"
(See Report Panel of experts van 12 April 2001, p.29, nr. 127)

After ARSLANIAN FRERES NV defended itself on these accusations the name was completely removed from the final report and, on the contrary, in annex IV of the report the Panel of Experts expresses its **deep appreciation and gratitude** towards ARSLANIAN FRERES for having assisted the Panel of Experts in making the report (see annex IV report S/2002/1146)

ARSLANIAN FRERES was wrongfully accused and a correction was made, much to the honor of the Panel of Experts.

18.

The same happened with a firm called MACKIE DIAMONDS in Antwerp.

In the original report of the Panel of Experts regarding Angola it was stated:

"*76. Azet Mohammed, who holds a British protected citizen passport, was arrested in March 2001. He was arrested for possession of a parcel of diamonds worth $100,000. Mohammed was described as the "lieutenant" of diamond dealer Ali Mackie Fouad Abess, of Mackie Diamonds in Antwerp, a Lebanese diamond dealer who was also a dealer in Sierra Leonean diamonds. Mackie, who holds a United States passport, began working in*

Angola in late 1999. He was deported from Angola for possession of false papers when Mohammed was arrested. Mackie's activities in Angola are under investigation."
(See letter Chairman Mr. Richard Ryan, Security Council Committee dd. 16.04.2001, p.20, nr. 76)

Also these accusations were proven completely false and - after presentation of the defense - were corrected in a following report.:

"Correction
221.Contrary to the information contained in paragraph 76 of the Mechanism's previous report (S/2001/363), there is no person know as Ali Mackie Fouad Abess. Mr. Ali Mackie, who has never been known by name or nickname as Fouad Abess, does not have any relationship with Mohammed Azet. Mr. Ali Mackie, a Belgian citizen of Lebanese origin, is the owner and director of Mackie Diamonds in Antwerp. He does not possess a United States passport. He was neither arrested in, nor deported from, Angola. While Mr. Mackie had business interests in Angola prior to 2000, the Angolan authorities have not reported any investigation into his activities in Angola."
(See UN report on Angola S/2001/966 dd. 12 October 2001, p.43, par. 221)

At least these two clear examples prove that there certainly is a possibility that wrongful accusations were uttered and corrections are necessary.

19.
In spite of the damage that was done parties mentioned wanted to accept - for the time being - that the Panel acted in good faith and that it only concluded upon false, faulty or wrong

information that has been given to them, if such information exists.

To avoid arbitrariness it is necessary that the concrete facts and elements on which the allegation is based, are at least retrievable, quod non

At least parties mentioned should have been allowed to defend themselves with a full knowledge of the facts and minimal to be able to know some motive that would make a minimum of control or contradiction possible, quod non

I presume every reasonable man should agree that arbitrariness is unacceptable.

From a normal cautious and careful person it can be expected that he seeks the truth by controlling his facts as much as possible and that he refrains from spreading rumors that could damage a party if he is not able to show the truthfulness of such rumors

20.

Declaring in public without being able to provide any proof or fact that parties mentioned would be involved in illegal or unethical activities would constitutes a crime of slander and defamation according to standards of many legislation, not only Belgian law.

Parties mentioned could accept that the original goal of the Panel is a noble goal that deserves all means and attention but on the other side this does not mean that all elementary principles of law can be put aside and companies or persons

can be branded based only on mere malicious rumors and allegations.

In such case we honestly speak of a witch-hunt, were arbitrariness rules and everyone that is pointed at is declared an outlaw without any further defense.

The term witch hunt is not farfetched if there is no control on the investigation, if there is an absolute immunity for the prosecutors, a complete anonymity regarding alleged sources of information, no necessity to present evidence, no possibility of contradiction, no possibility to defend or reply and in the end the accused is asked to accept what is to him only a pattern of slander and defamation.

The Panel should not be allowed to hide behind the so-called safety of it sources and therefore being capable of providing no evidence whatsoever and to consider itself unbound by any due process of law.

When in the medieval age the Inquisition wanted to protect a witness who was ready to testify that he/she had seen a suspect communicating with the devil the witness was allowed to appear in court with a mask, or hood, over the face. This was how the court heard the "truth", and the witness was protected from the evil eye of the witch who might take revenge after being burned at the stake.

What can not be allowed, if we do not want to turn back the clock 500 years, under any circumstances is the permanent concealment of the identity of so-called witnesses, neither the refusal to present any document or the content of any

declaration whatsoever and this on "grounds of confidentiality"

One can ask what kind of witness would exist that can give the Panel confidential information and then can refuse to answer further questions as to how such information was obtained or even the accused to verify the content of a declaration.

Going on the statements of the Panel itself as a rule this could be an undercover agent, who have been necessarily operating illegally in foreign countries in order to collect information that cannot be obtained by regular means.

It is clear that such "*evidence*" can not be excepted as valid and such clandestine witnesses can not be believed at all, more over where it is not even certain that the Panel is basing itself only on information received from undercover agents but could also exclusively be receiving very dubious information from competitors of parties concerned or any other party with an interest to damage parties concerned.

The court in Antwerp, which can be quoted as follows, gave a relevant judgment:

> *"By the public prosecutor no further information is given, nor is there a document rendered regarding the fact. In a former cession already a postponement was given in order to obtain permission from the State's Security Services to deliver documents in order to be able to judge the related, serious facts. For one reason or another no documents are rendered.*

> ***It is unacceptable that certain facts are quoted by the State's Security Services without producing any document of whatsoever to substantiate this allegation and without any right of the concerned person to defend himself. Such an attitude witnesses an unacceptable disapproval for the rights of defense. As much unacceptable is the fact that the court would be expected to judge a person without the judge even being able to render any control or to be able to judge a fact that is quoted against the concerned person..."*** (See Rb. Eerste Aanleg Antwerp, 12 February 2001, ongepubl., Seber / OM).

It is of course unacceptable that any Panel would be able to give unfounded allegations from a position of complete anonymity and immunity towards companies and persons and that these accused companies of persons should be sanctioned or even threatened in their existence, without any appropriate right of defense, especially if this is done under the name of the United Nations.

21.

Parties mentioned were ready to be confronted with each document, declaration or any other information that would have given rise to the mentioning of their name and the incorrect accusations coupled hereto and from which confrontation it would have been crystal clear that the requestors have been wrongly accused.

In breach with Resolution 1457 (2003) of the Security Council the Panel of Experts refused to provide any documentation and /or information as it was ordered to by the Security Council to do before 31 March 2003 and did not comply with it, not to the letter and certainly not to the spirit of the Resolution.

The only conclusion can be that the name of parties concerned should be cleared and explicit correction should be published.

Yours Sincerely,
For the requestors, their Attorney at law,

Mr. M. De Block
Antwerp, 27th of March 2003

Reaction No. 37

Advocatenkantoor
Joris A. VERCRAEYE

Antwerpen, 22 mei 2003,

*Joris A. VERCRAEYE **
Elly ROUSSEAU
Isabel CLUTS
Hilde MEULDERS
Heidi DEFRENNE

Mr. Mahmoud Kassem,

O. ref.: 2003163/JV /JV AHMAD / OPENBAAR MINISTERIE
U. ref.: EXPNATDRC/4/ASA

I refer to my letter to the UN headquarters in New York dd. 28/3/2003 and also to your letter dd. 22/4/2003.

My client Mr. Ali AHMAD denies any responsibility in this matter. He cannot be held responsible for eventual actions taken by a member of his family. Up to now he has no knowledge of any accusation by the UN on which he could or should give an answer.

ASA DIAM NV bought diamonds from Mr. Aziz NASSOUR. These diamonds came into Belgium with official invoices and have been declared at the E.C. airports in a correct way. It was not the responsibility of ASA DIAM NV the search out whether Mr. Aziz NASSOUR was dealing in any incorrect way whatsoever and an eventual accusation on this point should target Mr. Aziz NASSOUR and not the company ASA DIAM NV, represented by my client Mr. Ali AHMAD.

This letter is send to you without any prejudice.

Meanwhile I remain,

Yours Sincerely,

Joris A. VERCRAEYE.

Reaction No. 38

Advocatenkantoor
Joris A. VERCRAEYE

Antwerpen, 22 mei 2003,

***Joris A. VERCRAEYE* ***
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This letter is send to you without any prejudice.

Meanwhile I remain,

Yours Sincerely,

Joris A. VERCRAEYE.

Reaction No. 39

From the desk of Mr. Marc De Block
Attorney at law
Antwerp - Belgium

FINAL ATTACHMENT TO REPORT PANEL OF EXPERTS ON DRC

On behalf of DIAGEM BVBA

To the attention of
SECURITY COUNCIL UNITED NATIONS
PANEL OF EXPERTS
UNITED NATIONS
EXPNATDRC/UNON

REF: Resolution 1457/2003
AT THE REQUEST OF:

1. a company according to Belgian law, the company **DIAGEM BVBA**, with registered office at Hoveniersstraat 30 box 170, 2018 Antwerp
(Hereinafter called "*parties mentioned*")

represented by Mr. Marc De Block, attorney at law in Belgium, having his office Vlaamse Kaai 54-57 at 2000 Antwerp, Belgium.

1.
The Panel of Experts on the Illegal Exploitation of Natural Resources and other Forms of Wealth in the Democratic Republic of the Congo was appointed on request of the Security Council dated **2 June 2000** (S/REST/2000/20)

The original mandate of the Panel was:

- to follow up on reports and collect information on all activities of illegal exploitation of natural resources and other forms of wealth of the Democratic Republic of the Congo, including the violation of the sovereignty of that country;
- to research and analyze the links between the exploitation of the natural resources and other forms of wealth in the Democratic Republic of the Congo and the continuation of the conflict;
- to revert to the Council with recommendations. (S/2001/357, p. 3)

A first report was published the **12th of April 2001** (S/2001/357).

The Panel's mandate was extended until the **30th November 2001** (S/2001/951).

A second report was published the **13th November 2001** (S/2001/1072).

A third report was published the **16th October 2002** (S/2002/1146).

The Security Council took a new resolution on the **24th January 2003** (Resolution 1457/S/RES/1457/2003)

Following the text of Resolution 1457 (2003) of the Security Council dd. 24/01/2003, the Panel of Experts was explicitly requested "***to provide parties concerned, all information and documentation, connecting them to the illegal exploitation of***

the Democratic Republic of the Congo's natural resources and/or as being in contravention with OECD-guidelines".

A first deadline was set before the **31st of March 2003**, whereas the Panel would then have to publish our reactions as an attachment to their report, no later than 15th of April 2003.

Arguments however had to be deposited without having received any information and/or documentation from the Panel before the 31st of March.

Just before expiration of the deadline of 30th of March 2003 the Panel of Experts asked and obtained (for itself) an extension from the Security Council to provide such information / documentation, this time before the end of May 2003.

Following this Resolution 1457 - the defense notes on behalf of parties concerned, were already sent **on 24th of March with request to publish these before 15 April 2003 as annex to the Report in accordance with Resolution 1457.**

In view of the fact that we didn't receive any information and / or documentation - and this despite numerous requests - from the Panel - and this in breach with the resolution - the defense remained limited.

As from the same day, the **24 March 2003** a Note was published on the Internet by the President of the Security Council stating:

> "Following consultations among the members of the Security Council, they have decided, in order to give more time to the individuals, companies and States

wishing to send to the Secretariat their reactions to the findings of the last report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo (S/2002/1146), to extend the deadlines set out in paragraph 11 of Security Council resolution 1457 (2003) of 24 January 2003. Those individuals, companies and States named in the Panel's last report are invited to send their reactions to the Secretariat no later than 31 May 2003, in order for these reactions to be published no later than 20 June 2003."

The Panel **did not attempt to visit or hear people and companies they named and shamed in their reports and this since 2nd June 2000 or being a period of almost three years**…!

According to the Decisions of the Court of Human Rights (Hof Mensenrechten) (3e afd.) nr. 29731/96, 13 February 2001 (Krombach / Frankrijk), the right of everyone charged to be effectively defended and represented by a lawyer, assigned officially if need be, is fundamental and according to Articles 6 §§ 1 and 3 (c) of the Convention on Human Rights has the right to defend himself in person or… **through legal assistance of his own choosing.**

Invitations by the Panel to finally come to Nairobi, Kenya was first sent 9th April 2003 and this to come to Nairobi between 14 and 30 April 2003!

The Panel had to know - and was even informed explicitly - that many or most diamond offices in Belgium were closed for the Easter Holidays in this exact period and would not reopen until 28 of April 2003.

10 to 12 people had to stop all their normal activities and had to rush to Nairobi from all over the world on request of the Panel and this in such a period, on such short notice after the Panel had three years to invite, hear and or see anyone, anywhere they liked.

Translators, they were told, they could find for themselves and it was mentioned that also "*lawyers were welcome*".

The Panel stated further:

> ***"The degree of cooperation already developed between…and the Panel suggests that this meeting could produce positive outcomes, including arriving quickly at a mutually satisfactory solution to this matter…"***

Stating that " *information* " could only be handed over for review in face-to-face meetings made such proceedings a charade. Under such pretext no reasonable control or contradiction of information was reasonably possible and it entitled the Panel to show whatever they wanted and to give any explanation they want in a report afterwards on what they so-called presented as information.

My clients did not want to be made part of such kind of simulation, as it appeared only intended to give the Panel a formal opportunity to write in a final Report that all people and companies were invited, seen and heard and confronted with " evidence" in face to face meetings, while in reality no such real possibility of verification, contradiction and/or marginal control on any information was rendered.

Representation by an attorney or any other means of communication were rejected and this despite efforts from the Belgian Ministry of Economic Affairs to send information / documentation through their diplomatic services.

The Panel stated on forehand that no documentation or information would be given to anyone unless they personally came to Kenya. The Panel would not grant any meetings with legal representation unless one or more of his clients in person accompanied the attorney.

All parties concerned were obliged to travel in person to Nairobi as from the 23rd of April 2003.

Very limited appointments were granted and to each party was given approximately 5 to 10 minutes time, although the Panel alleges it speed "*5 hours*" in total on 9 different parties…

Relevant is that no explanation whatsoever was given by the Panel and the Panel handed over its so-called "*evidence*".

What the Panel called "*evidence*" could be regarded as completely ridiculous if the case was not so tragic.

Each party was given **one** (1) page, typed by the Panel of Experts itself and only containing a **summary** of the accusations itself.

So the Panel wants to present as evidence a summary made by itself of the accusations it made.

Parties concerned were asked to sign this document after which they could receive a copy.

If they refused to sign, they could not get a copy.

It is clear that until today the Panel of Experts has not respected the resolutions of the Security Council and has not provided any information and/of documentation as it was requested to do by the Security Council.

The composition of the Panel was changed during the reports and different people and companies were named and shamed in the different reports.

2.

All reports of the Panel of Experts were immediately published on the Internet and therefore considered to be authoritative and trustworthy, although the United Nations itself had no control over the content of such reports.

Banks in Belgium closed accounts, the R.C. President Kabila fired several government officials implicated by a Panel and third parties like the Beers asked clients not to deal with companies accused in the report of the Panel of Experts.

The result for people and companies mentioned was devastating.

The Panel of Experts never published or rendered any evidence or even information on which it based its findings and this despite numerous requests by parties mentioned in the report, by governments, national prosecutors and even a Senate Committee.

Only at the very last moment a document was created and given and this only to enable the Panel to say that "*documentation*" was given, quod non.

The Panel of Experts never gave any information about general guidelines it would have is used for making such reports or required standards of proof it utilized.

The practice of "*naming and shaming*" is unworthy for the United Nations and did not even follow elementary guidelines or general principles of law or ethics.

The Panel of Experts never even set out any ethical guidelines it might have used or created any mechanism of communication to consult with member states, other organizations or parties mentioned in their reports.

The Panel did not attempt to visit or hear people and companies they named and shamed in their reports and many parties rightfully expressed their outrage that the Panel of Experts:

* failed to contact parties mentioned or even to ask for their comments and
* never publicized any shred of evidence leading to their conclusions or made such evidence available to parties concerned, or at least to member states and their judicial authorities.

These comments still stand today.

It should be clear to any reasonable man that grave allegations should be backed by high evidentiary standards, quod non.

The Panel of Experts did not use such standards.

There was not even a procedure that allowed people or companies that had been accused to even know what kind of evidence was used where the Panel of Experts just preferred to publicly tarnish and destroy the reputation of a great number of companies and people.

As it was mentioned from the outset by the Panel itself, the principle of naming and shaming was "*high on their priority list*" and this without <u>any</u> explanation, <u>any</u> reasonable standard or <u>any</u> right of defense.

The danger of accusations made without a due process are clear and such accusations not only damage the people and companies involved, but also undermine the credibility of the United Nations past, present and future panels.

With regard to the firm BVBA DIAGEM, this company was **<u>NOT</u>** mentioned in the list of companies for which financial restrictions or travel bans were proposed.

The company was only listed in Annex 3 of Report S/2002/1146 as a company considered to be in violation of OECD-guidelines for multinational enterprises, quod non.

Whereas:

- this company mainly provides itself on the Antwerp Diamond Market;
- there were only very limited purchases from the DRC;
- all purchases from the DRC stopped completely even before the publication of the third Report of the Panel of Experts;
- OECD guidelines are not enforceable;

- OECD-guidelines are not applicable for the company BVBA DIAGEM, since the firm BVBA DIAGEM is not a multinational.
- it was never explained by the Panel of Experts which aspects of such guidelines would not have been respected.
- the limited trade that was done from the DRC (only a few invoices) was completely legal and such imports were done through the Diamond High Council and the Diamond Office in Antwerp, Belgium.

Also after Resolution 1457 the Panel never gave any explanation on why and how OECD-guidelines would have been broken by DIAGEM.

3.

The practice of "*naming and shaming*" as the Panel of Experts used it contravenes to the following articles in the Universal Declaration of Human Rights:

PREAMBLE

> ***Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,***
> ***Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,***
> ***Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,***

Whereas it is essential to promote the development of friendly relations between nations,
Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,
Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,
Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

...

Article 2.

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

... .

Article 6

Everyone has the right to recognition everywhere as a person before the law.

Article 7.

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 10.

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11.

(1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense.
(2) No one shall be held guilty of any penal offence on account of any act or omission, which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12.

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the

right to the protection of the law against such interference or attacks.

The refusal to give any opportunity to be heard on forehand and to give any defense afterwards or to be provided with any documentation and/or information is a flagrant violation of the above articles of the Universal Declaration of Human Rights.

It is also in violation of similar articles in the Pact of New York and the European Treaty on Human Rights.

4.

Immediately upon publication of the report, the Panel of Experts was requested numerous times to give even the smallest opportunity to present a defense.

The legal counsel requested an opportunity at any given place, time and date to present a defense and to be provided with any documents and / or information on the following occasions:

* fax messages 28 October 2002 (6)
* fax messages 6 November 2002, fax to United Nations 7 November 2002, fax to United Nations 13 November 2002 (3)
* E-mail 21 November 2002, e-mail 25 November 2002, visit New York 18 November 2002, e-mail 3 December 2002, e-mail 10 December 2002

Parties mentioned never received any documentation and / or information or any reasonable opportunity to present their defense before the Panel of Experts.

Only at the last moment the Panel mad a futile attempt to enable itself tot state that "*the letter*" of Resolution 1457 would have been respected, quod non (see supra).

5.

Resolution 1457 (2003) stated clearly:

> *"9. Stresses that the new mandate of the Panel should include:*
>
> - *Further review of relevant data and analysis of information previously gathered by the Panel, as well as any new information, including specifically material, provided by individuals and entities named in the previous reports of the Panel, in order to verify, reinforce and, where necessary, update the Panel's findings, **and/or CLEAR parties named in the Panel's previous reports, with a view to adjusting accordingly the lists attached to these reports;***
>
> *11. Invites, in the interests of transparency, individuals, companies and States, which have been named in the Panel's last report to send their reactions, with due regard to commercial confidentiality, to the Secretariat, **no later than 31 March 2003**, and requests the Secretary-General to arrange for the publication of these reactions, upon request by individuals, companies and States in the report of 15 October 2002, as an attachment to this report, **no later than 15 April 2003;***
>
> *12. Stresses the importance of dialogue between the Panel, individuals, companies and States and **requests in this regard that the Panel provide to the individuals, companies and States names, upon request, all information and documentation connecting them to the illegal***

***exploitation of the Democratic Republic of the Congo's natural resources**, and requests the Panel to establish a procedure to provide the Member States, upon request, information previously collected by the Panel to help them take the necessary investigative action, subject to the Panel's duty to preserve the safety of its sources, and in accordance with United Nations established practice in consultation with the United Nations Office of Legal Affairs."*

Following this resolution of the Security Council parties **(again)** asked the United Nations and especially the Panel of Experts to be provided with such documentation and / or information in order to be able to present such defense before the deadline of the 31st of March 2003 and in respect of Resolution 1457 (2003) and this was refused.

Not-limited, the following fax messages and e-mails were send by legal counsel to request such documentation and / or information: fax messages 29 January 2003 (3), e-mail 29 January 2003 (6), e-mail 6 February 2003 (4), e-mail 26 February 2003, e-mail 10 March 2003, e-mail 26 February 2003, e-mail 10 March 2003, fax messages 10 March 2003 (3), e-mail 11 March 2003 (3), e-mail 14 March 2003, fax message 17 March 2003, e-mail 17 March 2003 (2).

Legal counsel of client visited New York to meet with one Panel member, Mr. Bruno Chiemsky on the 19 March 2003, but was further denied any documentation or information at this occasion.

The Panel of Experts did not respect the Resolution of the Security Council 1457 (2003), namely to respect the deadline to provide documentation and / or information regarding parties mentioned in the Report and this before the 31st of March 2003 so consequently parties mentioned had nothing to defend themselves on at that time.

Parties mentioned did respect Resolution 1457 (2003).

It is clear that the Panel of Experts also did not respect Resolution 1457 after the extension it obtained from the Security Council.

There is a difference between providing real information and documentation or just pretending to give such information and documentation where in reality the Panel was only interested in being able to **formally** allege that they respected the Resolution 1457, quod non.

Giving a "*summary*" of allegations is not giving any information and/or documentation at all.

6.

Parties have even presented themselves before the Public Prosecutors in Belgium and this strictly on their own initiative in order to ask the Public Prosecutor to start an investigation in order to clear their names. An unorthodox request to be provided with justice.

The Panel of Experts never provided any documentation and / or information to such judicial authority in Belgium or any other country.

Parties are not only confronted with a despicable method of "*naming and shaming*" but were even refused to verify any information and / or documentation and thus to be informed promptly of the causes of the accusations made against them and a fortiori to have any adequate time or facilities for the preparation of any accurate reply.

I further refer to article 8, 10 and 11 of the Universal Declaration of Human Rights and especially article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms:

> *"Article 6 - Right to a fair trial*
> *1. In the determination of his civil rights and obligations or any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.*
>
> *2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.*
>
> *3. Everyone charged with a criminal offence has the following minimum rights:*

a. ***to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;***
b. ***to have adequate time and facilities for the preparation of his defence;***
c. *to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;*
d. *to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;*
e. *to have the free assistance of an interpreter if he can not understand or speak the language used in court."*

The Panel of Experts put all such elementary rights aside. (Cfr. Infra)

7.

The United Nations has only asked the Panel of Experts - and given a mandate to the Panel of Experts - to evaluate possible actions to be taken by the Security Council and to advise the Security Council on recommendations to be made to the international community, meaning countries, in order to ensure the evolution of the peace process in the Democratic Republic of the Congo.

The Panel never received a mandate to attack private business people and / or companies.

The Panel of Experts also never even had the possibility to compel testimony or documents and never had any judicial authority whatsoever and recognised this explicitly.

This means that the Panel of Experts at most received some dubious information on a strictly voluntary basis and did not have any means to verify whatsoever with regard to such information that was given to them.

8.

Such judicial authority was given to the Belgian Senate's commission "*Great Lakes*", which in Belgium obtained similar authorities as a Judge of Instruction to perform an investigation.

Following the 3 reports of the Panel of Experts, this Belgian Investigating Commission of the Senate conducted an investigation and published its findings with a report on the 20th February 2003.

Parties were summoned and appeared before this Senate's Commission a.o. to give a declaration under oath.

After investigation, the Senate's Commission concluded the following:

> *"The Commission has noted that several companies and / or persons, mentioned in the UN-report, have not been heard on forehand, which jeopardizes their rights of defence.*
>
> *Moreover the work of the Commission was made more difficult in view of the fact that she was not provided*

with any evidence and / or indications that should support the allegations in the UN-reports." (Free translation, report Senate Commission dd. 20 February 2003, p. 2 § 1)

Also:

"From the beginning of her activities, the Commission had been confronted with the lack of legal, sufficient and workable definitions in the UN-reports of the concepts "legal and illegal" and "plundering"." (See report Belgian Senate's Commission dd. 20 February 2003, p. 7 § 5.1)

Also:

"Economic activities or trade with companies or persons in each of the territories in the DRC can in itself not be considered illegal." (See report Senate's Commission dd. 20 February 2003, p. 7 § 5.3)

"The Commission asks the Government to insist with the United Nations to come to a more clear description of the concepts legal and illegal and of plundering of natural resources and this in view of further activities of the United Nations Panel." (See report Senate's Commission, p. 7 § 5.9)

And:

"The Commission has noted that the United Nations only issued embargos against countries like Angola, Sierra Leone and Liberia, and therefore trade with other

countries and even conflict areas must be considered as legal." (See report Senate's Commission, p. 19 § 3.1.6.)

And:

> *"With regard to the allegations formulated by the UN Panel against a number of diamond companies that OECD-guidelines would not have been respected, the Commission states that (not withstanding the fact that only concerns guidelines that are not enforceable) such guidelines are not even applicable for the diamond companies concerned because they can not be considered as multinationals. Above that, the Commission is of the opinion that the UN Panel must clarify which aspects of guidelines would not have been respected."* (See report Senate's Commission, p. 22 § 3.2.1)

And in conclusion:

> *"In this context and based on the available information, the Commission has to conclude that with regard to the concerned diamond companies no legal, incriminating elements can be found and that these diamond companies have acted in good faith."* (See report Belgian Senate's Commission, p. 23)

The Belgian Senate's Commission also noted that the Panel of Experts was clearly not infallible, since the Panel of Experts already needed to clear names of companies they named and shamed without hesitation before:

"The Commission, based on available information, joins the consideration mentioned in the second UN-report where it is stated that the company (Arslanian Frères) was mentioned unjustly in the first report and therefore has cleared this company." (See report Belgian Senate's Commission, p. 26, § 3.2.5.)

9.

Parties mentioned have as their most important activity the trade and / or the import and the export of diamonds.

They have had until the publication of the Report an irreproachable reputation in the diamond trade and this for many years.

The diamond trade in Antwerp is concentrated on a relatively small surface, being in practice 2 streets (Hoveniersstraat and Schupstraat) where all well-established companies that do business in diamonds are situated. It is a matter of common knowledge as well as an economic fact that the diamond trade in Antwerp (or elsewhere) fundamentally relies on confidence and *"hear-say"*.

A good reputation in the diamond trade is essential, even vital, for every diamond dealer or every company that does business in diamonds.

The reputation of parties mentioned has been irrevocably damaged by the Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and other forms of Wealth of the Democratic Republic of the Congo dd. 8 OCTOBER 2002 (S/2002/1146).

10.

In contradiction to what is stated or suggested in this report parties mentioned emphasize not to be conflict diamond dealers, or to be members of *"clans "* or associated with such clans, criminal organizations or criminal activities or to have done any illegal or unethical activity.

Every appearance of their name in the media with regard to the report - even while defending their name - only results in more unnecessary publicity and additional damage to the reputation.

Several international newspapers and other news channels have picked up the name of parties mentioned in respect to the report and negative publicity is unavoidable and beyond repair.

Banks have revoked and/or threatened to withdraw credit lines and major clients suspended all further transactions, afraid to be connected to someone so strongly accused by the United Nations where in fact the Panel is not the United Nations.

11.

It is a basis principle in any democratic state that persons who are accused have minimum rights to defend themselves.

In the report of the Panel of Experts, made public on the Internet, people and companies were named and accused without being heard and even without any reasonable possibility to reply.

For the record it can be noted, as general rules, that:

a) Parties mentioned have a respected business and do not deal in conflict diamonds or conduct any illegal or illegitimate activities;

b) Parties mentioned were not allowed to defend themselves with a full knowledge of the facts and minimal to be able to know some motive or fact that would make a minimum of control possible, quod non;

c) To avoid arbitrariness it is necessary that some concrete facts and elements, on which the allegations would be based, are at least retrievable, quod non;

d) Declaring without any proof or fact that parties mentioned would be conflict diamond dealers and or criminals or have done something illegal or unethical should be considered as an act of slander and defamation.

Parties mentioned refute categorically the baseless accusations and inform that:

a) They never received dialogue or information and/of documentation from the Panel of Experts.
b) Have never been heard or invited by the Prosecutor in Belgium, any police organization or any other authority
c) Have never been involved in any criminal or illegal activity
d) Have a legitimate business operation asserted by documents from the High Council and the Diamond Office in Antwerp, checked for the origin by the customs

authorities and forwarded to the HRD Diamond Office Antwerp (Diamond High Council).

e) Are situated in the heart of Antwerp working closely with the most respectable representatives in the Diamond business

12.

It is unlikely that when a person or company stands accused by a Panel Report, a democratic Government would give support unless it is sure of your correctness whereas all imports from diamonds are legal and a full audit can be provided.

The definition of a conflict diamond itself could be rendered meaningless. According to the World Diamond Council a "conflict diamond" is a diamond imported in violation of law or resolutions of the United Nations, intended to end trade in diamonds extracted from "Conflict Regions". Obviously, having imported diamonds legally into Belgium and in accordance with UN resolutions makes a diamond not a conflict diamond according to the World Diamond Council or any other standard.

It should also be clear that parties mentioned are fully committed to the UN's position relating to conflict diamonds.

13.

Parties mentioned defend themselves with the firmness and the certitude of being wrongly accused.

It needs no argument that an enormous injustice is committed and it is a shame when, in the name of the United Nations, persons and companies are branded worldwide on the internet, merely based on rumors, false information or hearsay, without any further interest in the accuracy of the information that is spread or the severe consequences for the people involved.

In such case arbitrariness rules and everyone that is pointed at is declared an outlaw without any further defense.

Parties mentioned are well aware that representatives of Member States to principal and subsidiary organs of the United Nations enjoy immunity from legal process in respect of words spoken or written and all acts done in capacity as such a representative. Parties mentioned are also aware that, moreover, the United Nations also enjoys immunity from every form of legal process. That having been said, parties mentioned only requested the opportunity to present their defense, to have their arguments verified and to be confronted directly with any information that would be held against them and this was simply denied in breach with Resolution 1457 (2002) that ordered the Panel to do so.

14.

In the report of the Panel of Experts it is nowhere stated which *"evidence"* would allow to utter accusations against parties mentioned.

At most one is rendering a self-account, where one should accept that only information would have been used that has been confirmed by more than one source?

The Panel calls a summary of the allegations "evidence"…?

This way nothing more than *"belief"* is requested for the used working-method, without the necessary effort to show what *"reliable"* information would be at hand and what verifiable criteria would have been used.

It is also to easy to us the term *" known to intelligence services and police organizations "*
(See report § 34 page 9)

Of which services and organizations is the Panel talking about?

Parties mentioned have been living and working in Belgium for years at the same address in Antwerp, together with their family.

Parties mentioned have a clean criminal record, have never been accused of anything illegal by the authorities and have never been invited to give any declaration or even answer any question by such authorities.

15.
There is a clear contradiction in the report.

If the information would be correct - which it is not - there would at least have been a disturbance in some way by Belgian or other authorities and at least someone would have been

interrogated, accused or under investigation (if not arrested), quod non.

If the investigation of such criminal activities however, were to be held so secretive that they are only known to " intelligence services " it would be incredible to publish such secret information worldwide on the Internet in a report that is read by millions of people.

Parties mentioned can only base themselves on the certainty that they have not infringed any embargo or law and that they did not, neither directly, nor indirectly, nor in person, nor as a middleman, nor by means of companies or third parties, not in any other way of form dealt in so-called conflict diamonds or have been associated with any criminal or unethical activity.

A legal adage states *"negativa non sunt probanda"*, which means that negative facts cannot be proven.

The above-mentioned adage is based on the idea that it is practically impossible to give evidence of a negative fact.

How can someone (or a company) proof that he (it) did <u>not</u> do something during a well-defined period of time?

The only possibility that is available is to proof an opposite positive fact or a series of positive facts that can exclude the negative fact.

If parties mentioned would have been contacted before the publication of the report on the Internet, damage could have been avoided and parties mentioned would have been able to

show on forehand that the information the Panel obtained was clearly false.

The Panel was invited on numerous occasions to provide a copy of one record of proof against parties mentioned, that cannot exist for the simple reason that parties mentioned did not do what they are accused of.

Providing a summary of allegations, made up by the Panel itself, and handing over one additional document, an official import license for one shipment, is no evident whatsoever.

This meets only the letter of the Resolution 1457, not the spirit!

16.

Parties mentioned have to suppose - for the time being - that the Panel should have received some information that has led to the mentioning of their names in the report.

Parties mentioned have to accept - for the time being - that wrong and false information has been provided, by which the Panel could have been misled and bad intent cannot be excluded where such negative publicity favors some competitors.

Parties mentioned however are left in the dark and did not receive any information and/documentation and/or explanation from the Panel.

It is in the interest of the Panel to test the truthfulness and the reliability of the information received together with the requestors and based upon the data they provide.

On at least two occasions a Panel of Experts made wrong accusations in a report and a correction had to be made after presentation of the defense:

17.

In the first report, published on the Internet, of this Panel of Experts regarding the Democratic Republic of Congo dd. 12 April 2001 (S/2001/357) a firm ARSLANIAN FRERES NV was heavily accused as follows:

"*ARSLANIAN, **the conflict diamond dealers** in the Eastern Democratic Republic of the Congo, provided on average 2.000.000$ per year, each directly to the Congo desk …*"
(See Report Panel of Experts of 12 April 2001, p.29, nr. 127)

After ARSLANIAN FRERES NV defended it on these accusations the name was completely removed from the final report and, on the contrary, in annex IV of the report the Panel of Experts expresses its **deep appreciation and gratitude** towards ARSLANIAN FRERES for having assisted the Panel of Experts in making the report (see annex IV report S/2002/1146)

ARSLANIAN FRERES was wrongfully accused and a correction was made, much to the honor of the Panel of Experts.

18.

The same happened with a firm called MACKIE DIAMONDS in Antwerp.

In the original report of the Panel of Experts regarding Angola it was stated:

"76. Azet Mohammed, who holds a British protected citizen passport, was arrested in March 2001. He was arrested for possession of a parcel of diamonds worth $100,000. Mohammed was described as the "lieutenant" of diamond dealer Ali Mackie Fouad Abess, of Mackie Diamonds in Antwerp, a Lebanese diamond dealer who was also a dealer in Sierra Leonean diamonds. Mackie, who holds a United States passport, began working in Angola in late 1999. He was deported from Angola for possession of false papers when Mohammed was arrested. Jackie's activities in Angola are under investigation."

(See letter Chairman Mr. Richard Ryan, Security Council Committee dd. 16.04.2001, p.20, nr. 76)

Also these accusations were proven completely false and - after presentation of the defense - were corrected in a following report.

"Correction

221.Contrary to the information contained in paragraph 76 of the Mechanism's previous report (S/2001/363), there is no person know as Ali Mackie Fouad Abess. Mr. Ali Mackie, who has never been known by name or nickname as Fouad Abess, does not have any relationship with Mohammed Azet. Mr. Ali Mackie, a Belgian citizen of Lebanese origin, is the owner and director of Mackie Diamonds in Antwerp. He does not possess a United States passport. He was neither arrested in, nor deported from, Angola. While Mr. Mackie had business interests in Angola prior to 2000, the Angolan authorities have not reported any investigation into his activities in Angola."

(See UN report on Angola S/2001/966 dd. 12 October 2001, p.43, par. 221)

At least these two clear examples prove that there certainly is a possibility that wrongful accusations were uttered and corrections are necessary.

19.

In spite of the damage that was done parties mentioned wanted to accept - for the time being - that the Panel acted in good faith and that it only concluded upon false, faulty or wrong information that has been given to them, if such information exists.

To avoid arbitrariness it is necessary that the concrete facts and elements on which the allegation is based, are at least retrievable, quod non

At least parties mentioned should have been allowed to defend themselves with a full knowledge of the facts and minimal to be able to know some motive that would make a minimum of control or contradiction possible, quod non

I presume every reasonable man should agree that arbitrariness is unacceptable.

From a normal cautious and careful person it can be expected that he seeks the truth by controlling his facts as much as possible and that he refrains from spreading rumors that could damage a party if he is not able to show the truthfulness of such rumors

20.

Declaring in public without being able to provide any proof or fact that parties mentioned would be involved in illegal or unethical activities would constitutes a crime of slander and defamation according to standards of many legislation, not only Belgian law.

Parties mentioned could accept that the original goal of the Panel is a noble goal that deserves all means and attention but on the other side this does not mean that all elementary principles of law can be put aside and companies or persons can be branded based only on mere malicious rumors and allegations.

In such case we honestly speak of a witch-hunt, were arbitrariness rules and everyone that is pointed at is declared an outlaw without any further defense.

The term witch hunt is not farfetched if there is no control on the investigation, if there is an absolute immunity for the prosecutors, a complete anonymity regarding alleged sources of information, no necessity to present evidence, no possibility of contradiction, no possibility to defend or reply and in the end the accused is asked to accept what is to him only a pattern of slander and defamation.

The Panel should not be allowed to hide behind the so-called safety of it sources and therefore being capable of providing no evidence whatsoever and to consider itself unbound by any due process of law.

When in the medieval age the Inquisition wanted to protect a witness who was ready to testify that he/she had seen a suspect communicating with the devil the witness was allowed to appear in court with a mask, or hood, over the face. This was how the court heard the "truth", and the witness was protected from the evil eye of the witch who might take revenge after being burned at the stake.

What can not be allowed, if we do not want to turn back the clock 500 years, under any circumstances is the permanent concealment of the identity of so-called witnesses, neither the refusal to present any document or the content of any declaration whatsoever and this on "grounds of confidentiality"

One can ask what kind of witness would exist that can give the Panel confidential information and then can refuse to answer further questions as to how such information was obtained or even the accused to verify the content of a declaration.

Going on the statements of the Panel itself as a rule this could be an undercover agent, who have been necessarily operating illegally in foreign countries in order to collect information that cannot be obtained by regular means.

It is clear that such *"evidence"* can not be excepted as valid and such clandestine witnesses can not be believed at all, more over where it is not even certain that the Panel is

basing itself only on information received from undercover agents but could also exclusively be receiving very dubious information from competitors of parties concerned or any other party with an interest to damage parties concerned.

The court in Antwerp, which can be quoted as follows, gave a relevant judgment:

> *"By the public prosecutor no further information is given, nor is there a document rendered regarding the fact. In a former cession already a postponement was given in order to obtain permission from the State's Security Services to deliver documents in order to be able to judge the related, serious facts. For one reason or another no documents are rendered.*
> ***It is unacceptable that certain facts are quoted by the State's Security Services without producing any document of whatsoever to substantiate this allegation and without any right of the concerned person to defend himself.***
> ***Such an attitude witnesses an unacceptable disapproval for the rights of defense. As much unacceptable is the fact that the court would be expected to judge a person without the judge even being able to render any control or to be able to judge a fact that is quoted against the concerned person…"*** (See Rb. Eerste Aanleg Antwerp, 12 February 2001, ongepubl., Seber / OM).

It is of course unacceptable that any Panel would be able to give unfounded allegations from a position of complete anonymity and immunity towards companies and persons and that these accused companies of persons should be sanctioned or even threatened in their existence, without any appropriate

right of defense, especially if this is done under the name of the United Nations.

21.

The company DIAGEM BVBA was started in 1985.

Mr. Hasmukh J. Patel has been the managing director of this company since this date.

In 1996 he was joined in the company by his nephew Mr. Nilesh C. Patel, who became the second managing director of the company.

They are respectively the second and the third generation in the diamond business.

In the whole history of the company there never had any problems with any legal authority whatsoever.

DIAGEM BVBA enjoyed a very good reputation in Antwerp and in India.

Normally DIAGEM only buys from the local Antwerp market as this is one of the major markets for rough diamonds and then the company exports these diamonds to India.

DIAGEM does not have any branch in any other country and is only based in Antwerp.

DIAGEM - during the whole of its existence - only made three imports from the DRC and this in the year 2001 for a total amount of 710.696,13 USD.

DIAGEM <u>never had any other imports</u> from the DRC or even from Africa before or after these three, exceptional imports.

The imports were done by an Indian client of DIAGEM BVBA, on his initiative, who bought the goods in the DRC and send them to DIAGEM in Antwerp.

The goods were accompanied by an invoice from a company MBC further totally unknown to DIAGEM BVBA.

DIAGEM only asked permission from the Diamond Office to import the goods from the DRC and the goods were imported through the Diamond Office and cleared by the Customs Department.

Since DIAGEM BVBA had never worked in the DRC the company was totally unacquainted with the political climate in the DRC and did not know the company MBC or any other person working in the DRC.

DIAGEM BVBA acted in good faith.

The three imports that were done in 2001 from the DRC are exceptional not only in time but also with regard to the amounts that are neglectable in view of the total turnover of the company.

The total turnover of the company in 2001 was 15.878.564,61 USD.

22.

Parties mentioned were ready to be confronted with each document, declaration or any other information that would have given rise to the mentioning of their name and the incorrect

accusations coupled hereto and from which confrontation it would have been crystal clear that the requestors have been wrongly accused.

In breach with Resolution 1457 (2003) of the Security Council the Panel of Experts refused to provide any documentation and /or information as it was ordered to by the Security Council to do before 31 March 2003 and did not comply with it, not to the letter and certainly not to the spirit of the Resolution.

The only conclusion can be that the name of parties concerned should be cleared and explicit correction should be published.

Yours Sincerely,
For the requestors, their Attorney at law,

Mr. M. De Block
Antwerp, 27th of May 2003

K2002-09676K

Reaction No. 40

From the desk of Mr. Marc De Block
Attorney at law
Antwerp - Belgium

FINAL ATTACHMENT TO REPORT PANEL OF EXPERTS ON DRC

On behalf of KOMAL GEMS NV

To the attention of
SECURITY COUNCIL UNITED NATIONS
PANEL OF EXPERTS
UNITED NATIONS
EXPNATDRC/UNON

REF : Resolution 1457/2003
AT THE REQUEST OF :

1. a company according to Belgian law, the company **NV KOMAL GEMS**, with registered office at Hoveniersstraat 2 box 347, 2018 Antwerp

(Hereinafter called "*parties mentioned*")

Represented by Mr. Marc De Block, attorney at law in Belgium, having his office Vlaamse Kaai 54-57 at 2000 Antwerp, Belgium.

1.

The Panel of Experts on the Illegal Exploitation of Natural Resources and other Forms of Wealth in the Democratic Republic of the Congo was appointed on request of the Security Council dated **2 June 2000** (S/REST/2000/20)

The original mandate of the Panel was:

- to follow up on reports and collect information on all activities of illegal exploitation of natural resources and other forms of wealth of the Democratic Republic of the Congo, including the violation of the sovereignty of that country;
- to research and analyze the links between the exploitation of the natural resources and other forms of wealth in the Democratic Republic of the Congo and the continuation of the conflict;
- to revert to the Council with recommendations. (S/2001/357, p. 3)

A first report was published the **12th of April 2001** (S/2001/357).

The Panel's mandate was extended until the **30th November 2001** (S/2001/951).

A second report was published the **13th November 2001** (S/2001/1072).

A third report was published the **16th October 2002** (S/2002/1146).

The Security Council took a new resolution on the **24th January 2003** (Resolution 1457/S/RES/1457/2003)

Following the text of Resolution 1457 (2003) of the Security Council dd. 24/01/2003, the Panel of Experts was explicitly requested "***to provide parties concerned, all information and documentation, connecting them to the illegal exploitation of the Democratic Republic of the Congo's natural resources and/or as being in contravention with OECD-guidelines***".

A first deadline was set before the **31st of March 2003**, whereas the Panel would then have to publish our reactions as an attachment to their report, no later than 15th of April 2003.

Arguments however had to be deposited without having received any information and/or documentation from the Panel before the 31st of March.

Just before expiration of the deadline of 30th of March 2003 the Panel of Experts asked and obtained (for itself) an extension from the Security Council to provide such information / documentation, this time before the end of May 2003.

Following this Resolution 1457 - the defense notes on behalf of parties concerned, were already sent **on 24th of March with request to publish these before 15 April 2003 as annex to the Report in accordance with Resolution 1457.**

In view of the fact that we didn't receive any information and / or documentation - and this despite numerous requests - from the Panel - and this in breach with the resolution - the defense remained limited.

As from the same day, the **24 March 2003** a Note was published on the Internet by the President of the Security Council stating:

> "Following consultations among the members of the Security Council, they have decided, in order to give more time to the individuals, companies and States wishing to send to the Secretariat their reactions to the findings of the last report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo (S/2002/1146), to extend the deadlines set out in paragraph 11 of Security Council resolution 1457 (2003) of 24 January 2003. Those individuals, companies and States named in the Panel's last report are invited to send their reactions to the Secretariat no later than 31 May 2003, in order for these reactions to be published no later than 20 June 2003."

The Panel **did not attempt to visit or hear people and companies they named and shamed in their reports and this since 2nd June 2000 or being a period of almost three years…** !

According to the Decisions of the Court of Human Rights (Hof Mensenrechten) (3e afd.) nr. 29731/96, 13 February 2001 (Krombach / Frankrijk), the right of everyone charged to be effectively defended and represented by a lawyer, assigned officially if need be, is fundamental and according to Articles 6 §§ 1 and 3 (c) of the Convention on Human Rights has the right to defend himself in person or…… **through legal assistance of his own choosing.**

Invitations by the Panel to finally come to Nairobi, Kenya was first sent 9th April 2003 and this to come to Nairobi between 14 and 30 April 2003 …!

The Panel had to know - and was even informed explicitly - that many or most diamond offices in Belgium were closed for the Easter Holidays in this exact period and would not reopen until 28 of April 2003.

10 to 12 people had to stop all their normal activities and had to rush to Nairobi from all over the world on request of the Panel and this in such a period, on such short notice after the Panel had three years to invite, hear and or see anyone, anywhere they liked.

Translators, they were told, they could find for themselves and it was mentioned that also "*lawyers were welcome*".

The Panel stated further :

> ***"The degree of cooperation already developed between…and the Panel suggests that this meeting could produce positive outcomes, including arriving quickly at a mutually satisfactory solution to this matter…"***

Stating that " *information* " could only be handed over for review in face-to-face meetings made such proceedings a charade. Under such pretext no reasonable control or contradiction of information was reasonably possible and it entitled the Panel to show whatever they wanted and to give any explanation they want in a report afterwards on what they so-called presented as information.

My clients did not want to be made part of such kind of simulation, as it appeared only intended to give the Panel a formal opportunity to write in a final Report that all people and companies were invited, seen and heard and confronted with " evidence" in face to face meetings, while in reality no such real possibility of verification, contradiction and/or marginal control on any information was rendered.

Representation by an attorney or any other means of communication were rejected and this despite efforts from the Belgian Ministry of Economic Affairs to send information / documentation through their diplomatic services.

The Panel stated on forehand that no documentation or information would be given to anyone unless they personally came to Kenya. The Panel would not grant any meetings with legal representation unless one or more of his clients in person accompanied the attorney.

All parties concerned were obliged to travel in person to Nairobi as from the 23rd of April 2003.

Very limited appointments were granted and to each party was given approximately 5 to 10 minutes time, although the Panel alleges it speed "*5 hours*" in total on 9 different parties…

Relevant is that no explanation whatsoever was given by the Panel and the Panel handed over its so-called "*evidence*".

What the Panel called "*evidence*" could be regarded as completely ridiculous if the case was not so tragic.

Each party was given **one** (1) page, typed by the Panel of Experts itself and only containing a **summary** of the accusations itself.

For KOMAL GEMS one of her own official import documents was added, also one page.

So the Panel wants to present as evidence a summary made by itself of the accusations it made and an official import licence, publicly known because used by KOMAL GEMS.

Parties concerned were asked to sign this document after which they could receive a copy.

If they refused to sign, they could not get a copy.

It is clear that until today the Panel of Experts has not respected the resolutions of the Security Council and has not provided any information and/of documentation as it was requested to do by the Security Council.

The composition of the Panel was changed during the reports and different people and companies were named and shamed in the different reports.

2.

All reports of the Panel of Experts were immediately published on the Internet and therefore considered to be authoritative and trustworthy, although the United Nations itself had no control over the content of such reports.

Banks in Belgium closed accounts, the R.C. President Kabila fired several government officials implicated by a Panel and third parties like the Beers asked clients not to deal with companies accused in the report of the Panel of Experts.

The result for people and companies mentioned was devastating.

The Panel of Experts never published or rendered any evidence or even information on which it based its findings and this despite numerous requests by parties mentioned in the report, by governments, national prosecutors and even a Senate Committee.

Only at the very last moment a document was created and given and this only to enable the Panel to say that "*documentation*" was given, quod non.

The Panel of Experts never gave any information about general guidelines it would have is used for making such reports or required standards of proof it utilized.

The practice of "*naming and shaming*" is unworthy for the United Nations and did not even follow elementary guidelines or general principles of law or ethics.

The Panel of Experts never even set out any ethical guidelines it might have used or created any mechanism of communication to consult with member states, other organizations or parties mentioned in their reports.

The Panel did not attempt to visit or hear people and companies they named and shamed in their reports and many parties rightfully expressed their outrage that the Panel of Experts:

* failed to contact parties mentioned or even to ask for their comments and
* never publicized any shred of evidence leading to their conclusions or made such evidence available to parties concerned, or at least to member states and their judicial authorities.

These comments still stand today.

It should be clear to any reasonable man that grave allegations should be backed by high evidentiary standards, quod non.

The Panel of Experts did not use such standards.

There was not even a procedure that allowed people or companies that had been accused to even know what kind of evidence was used where the Panel of Experts just preferred to publicly tarnish and destroy the reputation of a great number of companies and people.

As it was mentioned from the outset by the Panel itself, the principle of naming and shaming was "*high on their priority list*" and this without <u>any</u> explanation, <u>any</u> reasonable standard or <u>any</u> right of defense.

The danger of accusations made without a due process are clear and such accusations not only damage the people and companies involved, but also undermine the credibility of the United Nations past, present and future panels.

With regard to the firm NV KOMAL GEMS, this company was **NOT** mentioned in the list of companies for which financial restrictions or travel bans were proposed.

The company was only listed in Annex 3 of Report S/2002/1146 as a company considered to be in violation of OECD-guidelines for multinational enterprises, quod non.

Whereas:

- this company mainly provides itself on the Antwerp Diamond Market ;
- there were only very limited purchases from the DRC ;
- all purchases from the DRC stopped completely even before the publication of the third Report of the Panel of Experts ;
- OECD guidelines are not enforceable ;
- OECD-guidelines are not applicable for the company NV KOMAL GEMS, since the firm NV KOMAL GEMS is not a multinational.
- it was never explained by the Panel of Experts which aspects of such guidelines would not have been respected.
- the limited trade that was done from the DRC (only a few invoices) was completely legal and such imports were done through the Diamond High Council and the Diamond Office in Antwerp, Belgium.

Also after Resolution 1457 the Panel never gave any explanation on why and how OECD-guidelines would have been broken by KOMAL GEMS.

3.

The practice of "*naming and shaming*" as it was used by the Panel of Experts contravenes to the following articles in the Universal Declaration of Human Rights :

PREAMBLE

> ***Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,***
> ***Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,***
> ***Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,***
> *Whereas it is essential to promote the development of friendly relations between nations,*
> *Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,*

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

...

Article 2.

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

....

Article 6.

Everyone has the right to recognition everywhere as a person before the law.

Article 7.

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 10.

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11.

(1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense.

(2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12.

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks.

The refusal to give any opportunity to be heard on forehand and to give any defense afterwards or to be provided with any documentation and/or information is a flagrant violation of the above articles of the Universal Declaration of Human Rights.

It is also in violation of similar articles in the Pact of New York and the European Treaty on Human Rights.

4.

Immediately upon publication of the report, the Panel of Experts was requested numerous times to give even the smallest opportunity to present a defense.

The legal counsel requested an opportunity at any given place, time and date to present a defense and to be provided with any documents and / or information on the following occasions :

* fax messages 28 October 2002 (6)
* fax messages 6 November 2002, fax to United Nations 7 November 2002, fax to United Nations 13 November 2002 (3)
* e-mail 21 November 2002, e-mail 25 November 2002, visit New York 18 November 2002, e-mail 3 December 2002, e-mail 10 December 2002

Parties mentioned never received any documentation and / or information or any reasonable opportunity to present their defense before the Panel of Experts.

Only at the last moment the Panel mad a futile attempt to enable itself tot state that "*the letter*" of Resolution 1457 would have been respected, quod non (see supra).

5.

Resolution 1457 (2003) stated clearly:

"9. Stresses that the new mandate of the Panel should include :

- *Further review of relevant data and analysis of information previously gathered by the Panel, as well as any new information, including specifically material, provided by individuals and entities named in the previous reports of the Panel, in order to verify, reinforce and, where necessary, update the Panel's findings,* ***and/or CLEAR parties named in the Panel's previous reports, with a view to adjusting accordingly the lists attached to these reports;***

11. Invites, in the interests of transparency, individuals, companies and States, which have been named in the Panel's last report to send their reactions, with due regard to commercial confidentiality, to the Secretariat, ***no later than 31 March 2003,*** *and requests the Secretary-General to arrange for the publication of these reactions, upon request by individuals, companies and States in the report of 15 October 2002, as an attachment to this report,* ***no later than 15 April 2003*** *;*

12. Stresses the importance of dialogue between the Panel, individuals, companies and States and ***requests in this regard that the Panel provide to the individuals, companies and States names, upon request, all information and documentation connecting them to the illegal exploitation of the Democratic Republic of the Congo's natural resources,*** *and requests the Panel to establish a procedure to provide the Member States, upon request,*

information previously collected by the Panel to help them take the necessary investigative action, subject to the Panel's duty to preserve the safety of its sources, and in accordance with United Nations established practice in consultation with the United Nations Office of Legal Affairs."

Following this resolution of the Security Council parties (**again**) asked the United Nations and especially the Panel of Experts to be provided with such documentation and / or information in order to be able to present such defense before the deadline of the 31st of March 2003 and in respect of Resolution 1457 (2003) and this was refused.

Not-limited, the following fax messages and e-mails were send by legal counsel to request such documentation and / or information : fax messages 29 January 2003 (3), e-mail 29 January 2003 (6), e-mail 6 February 2003 (4), e-mail 26 February 2003, e-mail 10 March 2003, e-mail 26 February 2003, e-mail 10 March 2003, fax messages 10 March 2003 (3), e-mail 11 March 2003 (3), e-mail 14 March 2003, fax message 17 March 2003, e-mail 17 March 2003 (2).

Legal counsel of client visited New York to meet with one Panel member, Mr. Bruno Chiemsky on the 19 March 2003, but was further denied any documentation or information at this occasion.

The Panel of Experts did not respect the Resolution of the Security Council 1457 (2003), namely to respect the deadline to provide documentation and / or information regarding parties mentioned in the Report and this before the 31st of

March 2003 so consequently parties mentioned had nothing to defend themselves on at that time.

Parties mentioned did respect Resolution 1457 (2003).

It is clear that the Panel of Experts also did not respect Resolution 1457 after the extension it obtained from the Security Council.

There is a difference between providing real information and documentation or just pretending to give such information and documentation where in reality the Panel was only interested in being able to **formally** allege that they respected the Resolution 1457, quod non.

Giving a "*summary*" of allegations is not giving any information and/or documentation at all.

6.

Parties have even presented themselves before the Public Prosecutors in Belgium and this strictly on their own initiative in order to ask the Public Prosecutor to start an investigation in order to clear their names. An unorthodox request to be provided with justice.

The Panel of Experts never provided any documentation and / or information to such judicial authority in Belgium or any other country.

Parties are not only confronted with a despicable method of "*naming and shaming*" but were refused to verify any information and / or documentation and thus to be informed promptly of the causes of the accusations made against them and a fortiori to have any adequate time or facilities for the preparation of any accurate reply.

I further refer to article 8, 10 and 11 of the Universal Declaration of Human Rights and especially article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms:

> *"Article 6 - Right to a fair trial*
> *1. In the determination of his civil rights and obligations or any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.*
>
> *2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.*
>
> *3. Everyone charged with a criminal offence has the following minimum rights:*

a. ***to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;***

b. ***to have adequate time and facilities for the preparation of his defence;***

c. *to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;*

d. *to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;*

e. *to have the free assistance of an interpreter if he can not understand or speak the language used in court."*

The Panel of Experts put all such elementary rights aside. (cfr. infra)

7.

The United Nations has only asked the Panel of Experts - and given a mandate to the Panel of Experts - to evaluate possible actions to be taken by the Security Council and to advise the Security Council on recommendations to be made to the international community, meaning countries, in order to ensure the evolution of the peace process in the Democratic Republic of the Congo.

The Panel never received a mandate to attack private business people and / or companies.

The Panel of Experts also never even had the possibility to compel testimony or documents and never had any judicial authority whatsoever and recognised this explicitly.

This means that the Panel of Experts at most received some dubious information on a strictly voluntary basis and did not have any means to verify whatsoever with regard to such information that was given to them.

8.

Such judicial authority was given to the Belgian Senate's commission "*Great Lakes*", which in Belgium obtained similar authorities as a Judge of Instruction to perform an investigation.

Following the 3 reports of the Panel of Experts, this Belgian Investigating Commission of the Senate conducted an investigation and published its findings with a report on the 20th February 2003.

Parties were summoned and appeared before this Senate's Commission a.o. to give a declaration under oath.

After investigation, the Senate's Commission concluded the following :

> *"The Commission has noted that several companies and / or persons, mentioned in the UN-report, have not been heard on forehand, which jeopardizes their rights of defence.*
>
> *Moreover the work of the Commission was made more difficult in view of the fact that she was not provided with any evidence and / or indications that should*

support the allegations in the UN-reports." (free translation, report Senate Commission dd. 20 February 2003, p. 2 § 1)

Also :

"From the beginning of her activities, the Commission had been confronted with the lack of legal, sufficient and workable definitions in the UN-reports of the concepts "legal and illegal" and "plundering"." (see report Belgian Senate's Commission dd. 20 February 2003 , p. 7 § 5.1)

Also :

"Economic activities or trade with companies or persons in each of the territories in the DRC can in itself not be considered illegal." (see report Senate's Commission dd. 20 February 2003, p. 7 § 5.3)

"The Commission asks the Government to insist with the United Nations to come to a more clear description of the concepts legal and illegal and of plundering of natural resources and this in view of further activities of the United Nations Panel." (see report Senate's Commission, p. 7 § 5.9)

And :

"The Commission has noted that the United Nations only issued embargos against countries like Angola, Sierra Leone and Liberia, and therefore trade with other countries and even conflict areas must be considered as legal." (See report Senate's Commission, p. 19 § 3.1.6.)

And:

> *"With regard to the allegations formulated by the UN Panel against a number of diamond companies that OECD-guidelines would not have been respected, the Commission states that (not withstanding the fact that only concerns guidelines that are not enforceable) such guidelines are not even applicable for the diamond companies concerned because they can not be considered as multinationals. Above that, the Commission is of the opinion that the UN Panel must clarify which aspects of guidelines would not have been respected."* (See report Senate's Commission, p. 22 § 3.2.1)

And in conclusion:

> *"In this context and based on the available information, the Commission has to conclude that with regard to the concerned diamond companies no legal, incriminating elements can be found and that these diamond companies have acted in good faith."* (See report Belgian Senate's Commission, p. 23)

The Belgian Senate's Commission also noted that the Panel of Experts was clearly not infallible, since the Panel of Experts already needed to clear names of companies they named and shamed without hesitation before:

> *"The Commission, based on available information, joins the consideration mentioned in the second UN-report where it is stated that the company (Arslanian Frères) was mentioned unjustly in the first report and therefore has*

cleared this company." (See report Belgian Senate's Commission, p. 26, § 3.2.5.)

9.

Parties mentioned have as their most important activity the trade and / or the import and the export of diamonds.

They have had until the publication of the Report an irreproachable reputation in the diamond trade and this for many years.

The diamond trade in Antwerp is concentrated on a relatively small surface, being in practice 2 streets (Hoveniersstraat and Schupstraat) where all well-established companies that do business in diamonds are situated. It is a matter of common knowledge as well as an economic fact that the diamond trade in Antwerp (or elsewhere) fundamentally relies on confidence and *"hear-say"*.

A good reputation in the diamond trade is essential, even vital, for every diamond dealer or every company that does business in diamonds.

The reputation of parties mentioned has been irrevocably damaged by the Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and other forms of Wealth of the Democratic Republic of the Congo dd. 8 OCTOBER 2002 (S/2002/1146).

10.

In contradiction to what is stated or suggested in this report parties mentioned emphasize not to be conflict diamond dealers, or to be members of "*clans* " or associated with such clans, criminal organizations or criminal activities or to have done any illegal or unethical activity.

Every appearance of their name in the media with regard to the report - even while defending their name - only results in more unnecessary publicity and additional damage to the reputation.

Several international newspapers and other news channels have picked up the name of parties mentioned in respect to the report and negative publicity is unavoidable and beyond repair.

Banks have revoked and/or threatened to withdraw credit lines and major clients suspended all further transactions, afraid to be connected to someone so strongly accused by the United Nations where in fact the Panel is not the United Nations.

11.

It is a basis principle in any democratic state that persons who are accused have minimum rights to defend themselves.

In the report of the Panel of Experts, made public on the Internet, people and companies were named and accused without being heard and even without any reasonable possibility to reply.

For the record it can be noted, as general rules, that:

a) Parties mentioned have a respected business and do not deal in conflict diamonds or conduct any illegal or illegitimate activities;

b) Parties mentioned were not allowed to defend themselves with a full knowledge of the facts and minimal to be able to know some motive or fact that would make a minimum of control possible, quod non;

c) To avoid arbitrariness it is necessary that some concrete facts and elements, on which the allegations would be based, are at least retrievable, quod non;

d) Declaring without any proof or fact that parties mentioned would be conflict diamond dealers and or criminals or have done something illegal or unethical should be considered as an act of slander and defamation.

Parties mentioned refute categorically the baseless accusations and inform that:

a) They never received dialogue or information and/of documentation from the Panel of Experts.
b) Have never been heard or invited by the Prosecutor in Belgium, any police organization or any other authority
c) Have never been involved in any criminal or illegal activity
d) Have a legitimate business operation asserted by documents from the High Council and the Diamond Office in Antwerp, checked for the origin by the customs

authorities and forwarded to the HRD Diamond Office Antwerp (Diamond High Council).

e) Are situated in the heart of Antwerp working closely with the most respectable representatives in the Diamond business

12.

It is unlikely that when a person or company stands accused by a Panel Report, a democratic Government would give support unless it is sure of your correctness whereas all imports from diamonds are legal and a full audit can be provided.

The definition of a conflict diamond itself could be rendered meaningless. According to the World Diamond Council a "conflict diamond" is a diamond imported in violation of law or resolutions of the United Nations, intended to end trade in diamonds extracted from "Conflict Regions". Obviously, having imported diamonds legally into Belgium and in accordance with UN resolutions makes a diamond not a conflict diamond according to the World Diamond Council or any other standard.

It should also be clear that parties mentioned are fully committed to the UN's position relating to conflict diamonds.

13.

Parties mentioned defend themselves with the firmness and the certitude of being wrongly accused.

It needs no argument that an enormous injustice is committed and it is a shame when, in the name of the United Nations, persons and companies are branded worldwide on the internet, merely based on rumors, false information or hearsay, without

any further interest in the accuracy of the information that is spread or the severe consequences for the people involved.

In such case arbitrariness rules and everyone that is pointed at is declared an outlaw without any further defense.

Parties mentioned are well aware that representatives of Member States to principal and subsidiary organs of the United Nations enjoy immunity from legal process in respect of words spoken or written and all acts done in capacity as such a representative. Parties mentioned are also aware that, moreover, the United Nations also enjoys immunity from every form of legal process. That having been said, parties mentioned only requested the opportunity to present their defense, to have their arguments verified and would be to be confronted directly with any information that would be held against them and this was simply denied in breach with Resolution 1457 (2002) that ordered the Panel to do so.

14.

In the report of the Panel of Experts it is nowhere stated which *"evidence"* would allow to utter accusations against parties mentioned.

At most one is rendering a self-account, where one should accept that only information would have been used that has been confirmed by more than one source?

The Panel calls a summary of the allegations "evidence"…?

This way nothing more than *"belief"* is requested for the used working-method, without the necessary effort to show what

"reliable" information would be at hand and what verifiable criteria would have been used.

It is also to easy to us the term " *known to intelligence services and police organizations* "
(See report § 34 page 9)

Of which services and organizations is the Panel talking about?

Parties mentioned have been living and working in Belgium for years at the same address in Antwerp, together with their family.

Parties mentioned have a clean criminal record, have never been accused of anything illegal by the authorities and have never been invited to give any declaration or even answer any question by such authorities.

15.

There is a clear contradiction in the report.

If the information would be correct - which it is not - there would at least have been a disturbance in some way by Belgian or other authorities and at least someone would have been interrogated, accused or under investigation (if not arrested), quod non.

If the investigation of such criminal activities however, were to be held so secretive that they are only known to " intelligence services " it would be incredible to publish such secret information worldwide on the Internet in a report that is read by millions of people.

Parties mentioned can only base themselves on the certainty that they have not infringed any embargo or law and that they did not, neither directly, nor indirectly, nor in person, nor as a middleman, nor by means of companies or third parties, not in any other way of form dealt in so-called conflict diamonds or have been associated with any criminal or unethical activity.

A legal adage states *"negativa non sunt probanda"*, which means that negative facts cannot be proven.

The above-mentioned adage is based on the idea that it is practically impossible to give evidence of a negative fact.

How can someone (or a company) proof that he (it) did not do something during a well-defined period of time?

The only possibility that is available is to proof an opposite positive fact or a series of positive facts that can exclude the negative fact.

If parties mentioned would have been contacted before the publication of the report on the Internet, damage could have been avoided and parties mentioned would have been able to show on forehand that the information the Panel obtained was clearly false.

The Panel was invited on numerous occasions to provide a copy of one record of proof against parties mentioned, that cannot exist for the simple reason that parties mentioned did not do what they are accused of.

Providing a summary of allegations, made up by the Panel itself, and handing over one additional document, an official import license for one shipment, is no evident whatsoever.

This meets only the letter of the Resolution 1457, not the spirit!

16.

Parties mentioned have to suppose - for the time being - that the Panel should have received some information that has led to the mentioning of their names in the report.

Parties mentioned have to accept - for the time being - that wrong and false information has been provided, by which the Panel could have been misled and bad intent cannot be excluded where such negative publicity favors some competitors.

Parties mentioned however are left in the dark and did not receive any information and/documentation and/or explanation from the Panel.

It is in the interest of the Panel to test the truthfulness and the reliability of the information received together with the requestors and based upon the data they provide.

On at least two occasions a Panel of Experts made wrong accusations in a report and a correction had to be made after presentation of the defense:

17.

In the first report, published on the Internet, of this Panel of Experts regarding the Democratic Republic of Congo dd. 12 April 2001 (S/2001/357) a firm ARSLANIAN FRERES NV was heavily accused as follows:

"*ARSLANIAN, **the conflict diamond dealers** in the Eastern Democratic Republic of the Congo, provided on average 2.000.000$ per year, each directly to the Congo desk …"*
(See rapport Panel of experts van 12 April 2001, p.29, nr. 127)

After ARSLANIAN FRERES NV defended itself on these accusations the name was completely removed from the final report and, on the contrary, in annex IV of the report the Panel of Experts expresses its **deep appreciation and gratitude** towards ARSLANIAN FRERES for having assisted the Panel of Experts in making the report (see annex IV report S/2002/1146)

ARSLANIAN FRERES was wrongfully accused and a correction was made, much to the honor of the Panel of Experts.

18.

The same happened with a firm called MACKIE DIAMONDS in Antwerp.

In the original report of the Panel of Experts regarding Angola it was stated:

"*76. Azet Mohammed, who holds a British protected citizen passport, was arrested in March 2001. He was arrested for possession of a parcel of diamonds worth $100,000. Mohammed*

was described as the "lieutenant" of diamond dealer Ali Mackie Fouad Abess, of Mackie Diamonds in Antwerp, a Lebanese diamond dealer who was also a dealer in Sierra Leonean diamonds. Mackie, who holds a United States passport, began working in Angola in late 1999. He was deported from Angola for possession of false papers when Mohammed was arrested. Mackie's activities in Angola are under investigation."
(See letter Chairman Mr. Richard Ryan, Security Council Committee dd. 16.04.2001, p.20, nr. 76)

Also these accusations were proven completely false and - after presentation of the defense - were corrected in a following report.:

"Correction
221.Contrary to the information contained in paragraph 76 of the Mechanism's previous report (S/2001/363), there is no person know as Ali Mackie Fouad Abess. Mr. Ali Mackie, who has never been known by name or nickname as Fouad Abess, does not have any relationship with Mohammed Azet. Mr. Ali Mackie, a Belgian citizen of Lebanese origin, is the owner and director of Mackie Diamonds in Antwerp. He does not possess a United States passport. He was neither arrested in, nor deported from, Angola. While Mr. Mackie had business interests in Angola prior to 2000, the Angolan authorities have not reported any investigation into his activities in Angola."
(See UN report on Angola S/2001/966 dd. 12 October 2001, p.43, par. 221)

At least these two clear examples prove that there certainly is a possibility that wrongful accusations were uttered and corrections are necessary.

19.

In spite of the damage that was done parties mentioned wanted to accept - for the time being - that the Panel acted in good faith and that it only concluded upon false, faulty or wrong information that has been given to them, if such information exists.

To avoid arbitrariness it is necessary that the concrete facts and elements on which the allegation is based, are at least retrievable, quod non

At least parties mentioned should have been allowed to defend themselves with a full knowledge of the facts and minimal to be able to know some motive that would make a minimum of control or contradiction possible, quod non

I presume every reasonable man should agree that arbitrariness is unacceptable.

From a normal cautious and careful person it can be expected that he seeks the truth by controlling his facts as much as possible and that he refrains from spreading rumors that could damage a party if he is not able to show the truthfulness of such rumors

20.

Declaring in public without being able to provide any proof or fact that parties mentioned would be involved in illegal or unethical activities would constitutes a crime of slander and defamation according to standards of many legislation, not only Belgian law.

Parties mentioned could accept that the original goal of the Panel is a noble goal that deserves all means and attention but on the other side this does not mean that all elementary principles of law can be put aside and companies or persons can be branded based only on mere malicious rumors and allegations.

In such case we honestly speak of a witch-hunt, were arbitrariness rules and everyone that is pointed at is declared an outlaw without any further defense.

The term witch hunt is not farfetched if there is no control on the investigation, if there is an absolute immunity for the prosecutors, a complete anonymity regarding alleged sources of information, no necessity to present evidence, no possibility of contradiction, no possibility to defend or reply and in the end the accused is asked to accept what is to him only a pattern of slander and defamation.

The Panel should not be allowed to hide behind the so-called safety of it sources and therefore being capable of providing no evidence whatsoever and to consider itself unbound by any due process of law.

When in the medieval age the Inquisition wanted to protect a witness who was ready to testify that he/she had seen a suspect communicating with the devil the witness was allowed to appear in court with a mask, or hood, over the face. This was how the court heard the "truth", and the witness was protected from the evil eye of the witch who might take revenge after being burned at the stake.

What can not be allowed, if we do not want to turn back the clock 500 years, under any circumstances is the permanent concealment of the identity of so-called witnesses, neither the refusal to present any document or the content of any declaration whatsoever and this on "grounds of confidentiality"

One can ask what kind of witness would exist that can give the Panel confidential information and then can refuse to answer further questions as to how such information was obtained or even the accused to verify the content of a declaration.

Going on the statements of the Panel itself as a rule this could be an undercover agent, who have been necessarily operating illegally in foreign countries in order to collect information that cannot be obtained by regular means.

It is clear that such "*evidence*" can not be excepted as valid and such clandestine witnesses can not be believed at all, more over where it is not even certain that the Panel is basing itself only on information received from undercover agents but could also exclusively be receiving very dubious information from competitors of parties concerned or any other party with an interest to damage parties concerned.

The court in Antwerp, which can be quoted as follows, gave a relevant judgment:

> *"By the public prosecutor no further information is given, nor is there a document rendered regarding the fact. In a former cession already a postponement was given in order to obtain permission from the State's*

Security Services to deliver documents in order to be able to judge the related, serious facts. For one reason or another no documents are rendered.

It is unacceptable that certain facts are quoted by the State's Security Services without producing any document of whatsoever to substantiate this allegation and without any right of the concerned person to defend himself.

Such an attitude witnesses an unacceptable disapproval for the rights of defense. As much unacceptable is the fact that the court would be expected to judge a person without the judge even being able to render any control or to be able to judge a fact that is quoted against the concerned person…" (See Rb. Eerste Aanleg Antwerp, 12 February 2001, ongepubl., Seber / OM).

It is of course unacceptable that any Panel would be able to give unfounded allegations from a position of complete anonymity and immunity towards companies and persons and that these accused companies of persons should be sanctioned or even threatened in their existence, without any appropriate right of defense, especially if this is done under the name of the United Nations.

21.

KOMAL GEMS NV has as its main activity the buying of rough diamonds on the local market in Antwerp to export them to manufactures in India.

This is the main and in fact only business of this company.

KOMAL GEMS NV only had very limited transactions in the DRC.

It concerns only two transactions, namely:

- 18/05/2001: 151.288,92 USD
- 03/07/2001: 353.857,19 USD

These imports are done by a client of KOMAL GEMS and came through the Diamond Office of the Diamond High Council in Antwerp and were legally imported.

Except for these two imports the company KOMAL GEMS NV never imported any goods from the DRC or any other African country for that matter.

The imports are not only very limited in time (on two occasions on 2001) but also for a limited fraction of the total turnover of the company, being 47.620.420 EUR in 2000 and 32.868.252 EUR in 2001 and 55.943.166 EUR in 2003.

KOMAL GEMS NV did not know the company MBC that invoiced the goods, nor did the company know anything about the business or political climate in the DRC.

The transactions were for KOMAL GEMS exceptional and KOMAL GEMS NV at least acted in good faith.

22.

Parties mentioned were ready to be confronted with each document, declaration or any other information that would have given rise to the mentioning of their name and the incorrect accusations coupled hereto and from which confrontation it would have been crystal clear that the requestors have been wrongly accused.

In breach with Resolution 1457 (2003) of the Security Council the Panel of Experts refused to provide any documentation and /or information as it was ordered to by the Security Council to do before 31 March 2003 and did not comply with it, not to the letter and certainly not to the spirit of the Resolution.

The only conclusion can be that the name of parties concerned should be cleared and explicit correction should be published.

Yours Sincerely,
For the requestors, their Attorney at law,

Mr. M. De Block
Antwerp, 27th of May 2003

Reaction No. 41

From the desk of Mr. Marc De Block
Attorney at law
Antwerp - Belgium

FINAL ATTACHMENT TO REPORT PANEL OF EXPERTS ON DRC

On behalf of JEWEL IMPEX BVBA

To the attention of
SECURITY COUNCIL UNITED NATIONS
PANEL OF EXPERTS
UNITED NATIONS
EXPNATDRC/UNON

REF: Resolution 1457/2003
AT THE REQUEST OF:

1. a company according to Belgian law, the company **JEWEL IMPEX BVBA**, with registered office at Schupstraat 1/7, 2018 Antwerp

(Hereinafter called "*parties mentioned*")

represented by Mr. Marc De Block, attorney at law in Belgium, having his office Vlaamse Kaai 54-57 at 2000 Antwerp, Belgium.

1.

The Panel of Experts on the Illegal Exploitation of Natural Resources and other Forms of Wealth in the Democratic Republic of the Congo was appointed on request of the Security Council dated **2 June 2000** (S/REST/2000/20)

The original mandate of the Panel was:

- to follow up on reports and collect information on all activities of illegal exploitation of natural resources and other forms of wealth of the Democratic Republic of the Congo, including the violation of the sovereignty of that country;
- to research and analyze the links between the exploitation of the natural resources and other forms of wealth in the Democratic Republic of the Congo and the continuation of the conflict;
- to revert to the Council with recommendations. (S/2001/357, p. 3)

A first report was published the **12th of April 2001** (S/2001/357).

The Panel's mandate was extended until the **30th November 2001** (S/2001/951).

A second report was published the **13th November 2001** (S/2001/1072).

A third report was published the **16th October 2002** (S/2002/1146).

The Security Council took a new resolution on the **24th January 2003** (Resolution 1457/S/RES/1457/2003)

Following the text of Resolution 1457 (2003) of the Security Council dd. 24/01/2003, the Panel of Experts was explicitly requested "***to provide parties concerned, all information and documentation, connecting them to the illegal exploitation of***

the Democratic Republic of the Congo's natural resources and/or as being in contravention with OECD-guidelines".

A first deadline was set before the **31st of March 2003**, whereas the Panel would then have to publish our reactions as an attachment to their report, no later than 15th of April 2003.

Arguments however had to be deposited without having received any information and/or documentation from the Panel before the 31st of March.

Just before expiration of the deadline of 30th of March 2003 the Panel of Experts asked and obtained (for itself) an extension from the Security Council to provide such information / documentation, this time before the end of May 2003.

Following this Resolution 1457 - the defense notes on behalf of parties concerned, were already sent **on 24th of March with request to publish these before 15 April 2003 as annex to the Report in accordance with Resolution 1457.**

In view of the fact that we didn't receive any information and / or documentation - and this despite numerous requests - from the Panel - and this in breach with the resolution - the defense remained limited.

As from the same day, the **24 March 2003** a Note was published on the Internet by the President of the Security Council stating:

> *"Following consultations among the members of the Security Council, they have decided, in order to give more time to the individuals, companies and States*

wishing to send to the Secretariat their reactions to the findings of the last report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo (S/2002/1146), to extend the deadlines set out in paragraph 11 of Security Council resolution 1457 (2003) of 24 January 2003. Those individuals, companies and States named in the Panel's last report are invited to send their reactions to the Secretariat no later than 31 May 2003, in order for these reactions to be published no later than 20 June 2003."

The Panel **did not attempt to visit or hear people and companies they named and shamed in their reports and this since 2nd June 2000 or being a period of almost three years...!**

According to the Decisions of the Court of Human Rights (Hof Mensenrechten) (3e afd.) nr. 29731/96, 13 February 2001 (Combat / Frankrijk), the right of everyone charged to be effectively defended and represented by a lawyer, assigned officially if need be, is fundamental and according to Articles 6 §§ 1 and 3 (c) of the Convention on Human Rights has the right to defend himself in person or... **through legal assistance of his own choosing.**

Invitations by the Panel to finally come to Nairobi, Kenya was first sent 9th April 2003 and this to come to Nairobi between 14 and 30 April 2003!

The Panel had to know - and was even informed explicitly - that many or most diamond offices in Belgium were closed for the Easter Holidays in this exact period and would not reopen until 28 of April 2003.

10 to 12 people had to stop all their normal activities and had to rush to Nairobi from all over the world on request of the Panel and this in such a period, on such short notice after the Panel had three years to invite, hear and or see anyone, anywhere they liked.

Translators, they were told, they could find for themselves and it was mentioned that also "*lawyers were welcome*".

The Panel stated further:

> ***"The degree of cooperation already developed between…and the Panel suggests that this meeting could produce positive outcomes, including arriving quickly at a mutually satisfactory solution to this matter…"***

Stating that " *information* " could only be handed over for review in face-to-face meetings made such proceedings a charade. Under such pretext no reasonable control or contradiction of information was reasonably possible and it entitled the Panel to show whatever they wanted and to give any explanation they want in a report afterwards on what they so-called presented as information.

My clients did not want to be made part of such kind of simulation, as it appeared only intended to give the Panel a formal opportunity to write in a final Report that all people and companies were invited, seen and heard and confronted with " evidence" in face to face meetings, while in reality no such real possibility of verification, contradiction and/or marginal control on any information was rendered.

Representation by an attorney or any other means of communication were rejected and this despite efforts from the Belgian Ministry of Economic Affairs to send information / documentation through their diplomatic services.

The Panel stated on forehand that no documentation or information would be given to anyone unless they personally came to Kenya. The Panel would not grant any meetings with legal representation unless one or more of his clients in person accompanied the attorney.

All parties concerned were obliged to travel in person to Nairobi as from the 23rd of April 2003.

Very limited appointments were granted and to each party was given approximately 5 to 10 minutes time, although the Panel alleges it speed "*5 hours*" in total on 9 different parties…

Relevant is that no explanation whatsoever was given by the Panel and the Panel handed over its so-called "*evidence*".

What the Panel called "*evidence*" could be regarded as completely ridiculous if the case was not so tragic.

Each party was given **one** (1) page, typed by the Panel of Experts itself and only containing a **summary** of the accusations itself.

So the Panel wants to present as evidence a summary made by itself of the accusations it made.

Parties concerned were asked to sign this document after which they could receive a copy.

If they refused to sign, they could not get a copy.

It is clear that until today the Panel of Experts has not respected the resolutions of the Security Council and has not provided any information and/of documentation as it was requested to do by the Security Council.

The composition of the Panel was changed during the reports and different people and companies were named and shamed in the different reports.

2.

All reports of the Panel of Experts were immediately published on the Internet and therefore considered to be authoritative and trustworthy, although the United Nations itself had no control over the content of such reports.

Banks in Belgium closed accounts, the R.C. President Kabila fired several government officials implicated by a Panel and third parties like the Beers asked clients not to deal with companies accused in the report of the Panel of Experts.

The result for people and companies mentioned was devastating.

The Panel of Experts never published or rendered any evidence or even information on which it based its findings and this despite numerous requests by parties mentioned in the report, by governments, national prosecutors and even a Senate Committee.

Only at the very last moment a document was created and given and this only to enable the Panel to say that "*documentation*" was given, quod non.

The Panel of Experts never gave any information about general guidelines it would have is used for making such reports or required standards of proof it utilized.

The practice of "*naming and shaming*" is unworthy for the United Nations and did not even follow elementary guidelines or general principles of law or ethics.

The Panel of Experts never even set out any ethical guidelines it might have used or created any mechanism of communication to consult with member states, other organizations or parties mentioned in their reports.

The Panel did not attempt to visit or hear people and companies they named and shamed in their reports and many parties rightfully expressed their outrage that the Panel of Experts:

* failed to contact parties mentioned or even to ask for their comments and
* never publicized any shred of evidence leading to their conclusions or made such evidence available to parties concerned, or at least to member states and their judicial authorities.

These comments still stand today.

It should be clear to any reasonable man that grave allegations should be backed by high evidentiary standards, quod non.

The Panel of Experts did not use such standards.

There was not even a procedure that allowed people or companies that had been accused to even know what kind of evidence was used where the Panel of Experts just preferred to publicly tarnish and destroy the reputation of a great number of companies and people.

As it was mentioned from the outset by the Panel itself, the principle of naming and shaming was "*high on their priority list*" and this without <u>any</u> explanation, <u>any</u> reasonable standard or <u>any</u> right of defense.

The danger of accusations made without a due process are clear and such accusations not only damage the people and companies involved, but also undermine the credibility of the United Nations past, present and future panels.

With regard to the firm BVBA JEWEM IMPEX, this company was **<u>NOT</u>** mentioned in the list of companies for which financial restrictions or travel bans were proposed.

The company was only listed in Annex 3 of Report S/2002/1146 as a company considered to be in violation of OECD-guidelines for multinational enterprises, quod non.

Whereas:

- this company mainly provides itself on the Antwerp Diamond Market;
- there were only very limited purchases from the DRC;
- all purchases from the DRC stopped completely even before the publication of the third Report of the Panel of Experts;
- OECD guidelines are not enforceable;
- OECD-guidelines are not applicable for the company BVBA JEWEL IMPEX, since the firm BVBA JEWEL IMPEX is not a multinational.
- it was never explained by the Panel of Experts which aspects of such guidelines would not have been respected.
- the limited trade that was done from the DRC (only a few invoices) was completely legal and such imports were done through the Diamond High Council and the Diamond Office in Antwerp, Belgium.

Also after Resolution 1457 the Panel never gave any explanation on why and how OECD-guidelines would have been broken by JEWEL IMPEX.

3.

The practice of "*naming and shaming*" as the Panel of Experts used it contravenes to the following articles in the Universal Declaration of Human Rights:

PREAMBLE

> ***Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,***

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

…

Article 2.

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin,

property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

....

Article 6.

Everyone has the right to recognition everywhere as a person before the law.

Article 7.

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 10.

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11.

(1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense.

(2) No one shall be held guilty of any penal offence on account of any act or omission, which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier

> ***penalty be imposed than the one that was applicable at the time the penal offence was committed.***

Article 12.

> ***No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks.***

The refusal to give any opportunity to be heard on forehand and to give any defense afterwards or to be provided with any documentation and/or information is a flagrant violation of the above articles of the Universal Declaration of Human Rights.

It is also in violation of similar articles in the Pact of New York and the European Treaty on Human Rights.

4.

Immediately upon publication of the report, the Panel of Experts was requested numerous times to give even the smallest opportunity to present a defense.

The legal counsel requested an opportunity at any given place, time and date to present a defense and to be provided with any documents and / or information on the following occasions:

* fax messages 28 October 2002 (6)
* fax messages 6 November 2002, fax to United Nations 7 November 2002, fax to United Nations 13 November 2002 (3)

* E-mail 21 November 2002, e-mail 25 November 2002, visit New York 18 November 2002, e-mail 3 December 2002, e-mail 10 December 2002

Parties mentioned never received any documentation and / or information or any reasonable opportunity to present their defense before the Panel of Experts.

Only at the last moment the Panel mad a futile attempt to enable itself tot state that "*the letter*" of Resolution 1457 would have been respected, quod non (see supra).

5.

Resolution 1457 (2003) stated clearly:

> *"9. Stresses that the new mandate of the Panel should include:*
>
> - *Further review of relevant data and analysis of information previously gathered by the Panel, as well as any new information, including specifically material, provided by individuals and entities named in the previous reports of the Panel, in order to verify, reinforce and, where necessary, update the Panel's findings,* ***and/or CLEAR parties named in the Panel's previous reports, with a view to adjusting accordingly the lists attached to these reports;***
>
> *11. Invites, in the interests of transparency, individuals, companies and States, which have been named in the Panel's last report to send their reactions, with due regard to commercial confidentiality, to the Secretariat,* ***no later than 31 March 2003,*** *and requests the Secretary-General to arrange for the publication of*

these reactions, upon request by individuals, companies and States in the report of 15 October 2002, as an attachment to this report, ***no later than 15 April 2003;***
12. Stresses the importance of dialogue between the Panel, individuals, companies and States and ***requests in this regard that the Panel provide to the individuals, companies and States names, upon request, all information and documentation connecting them to the illegal exploitation of the Democratic Republic of the Congo's natural resources****, and requests the Panel to establish a procedure to provide the Member States, upon request, information previously collected by the Panel to help them take the necessary investigative action, subject to the Panel's duty to preserve the safety of its sources, and in accordance with United Nations established practice in consultation with the United Nations Office of Legal Affairs."*

Following this resolution of the Security Council parties **(again)** asked the United Nations and especially the Panel of Experts to be provided with such documentation and / or information in order to be able to present such defense before the deadline of the 31st of March 2003 and in respect of Resolution 1457 (2003) and this was refused.

Not-limited, the following fax messages and e-mails were send by legal counsel to request such documentation and / or information: fax messages 29 January 2003 (3), e-mail 29 January 2003 (6), e-mail 6 February 2003 (4), e-mail 26 February 2003, e-mail 10 March 2003, e-mail 26 February 2003, e-mail 10 March 2003, fax messages 10 March 2003 (3), e-mail 11 March 2003 (3), e-mail 14 March 2003, fax message 17 March 2003, e-mail 17 March 2003 (2).

Legal counsel of client visited New York to meet with one Panel member, Mr. Bruno Chiemsky on the 19 March 2003, but was further denied any documentation or information at this occasion.

The Panel of Experts <u>did not</u> respect the Resolution of the Security Council 1457 (2003), namely to respect the deadline to provide documentation and / or information regarding parties mentioned in the Report and this before the 31st of March 2003 so consequently parties mentioned had <u>nothing</u> to defend themselves on at that time.

Parties mentioned <u>did</u> respect Resolution 1457 (2003).

It is clear that the Panel of Experts also did not respect Resolution 1457 <u>after</u> the extension it obtained from the Security Council.

There is a difference between providing real information and documentation or just pretending to give such information and documentation where in reality the Panel was only interested in being able to **<u>formally</u>** allege that they respected the Resolution 1457, quod non.

Giving a "*summary*" of allegations is not giving any information and/or documentation at all.

6.

Parties have even presented themselves before the Public Prosecutors in Belgium and this strictly on their own initiative in order to ask the Public Prosecutor to start an

investigation in order to clear their names. An unorthodox request to be provided with justice.

The Panel of Experts never provided any documentation and / or information to such judicial authority in Belgium or any other country.

Parties are not only confronted with a despicable method of "*naming and shaming*" but were even refused to verify any information and / or documentation and thus to be informed promptly of the causes of the accusations made against them and a fortiori to have any adequate time or facilities for the preparation of any accurate reply.

I further refer to article 8, 10 and 11 of the Universal Declaration of Human Rights and especially article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms:

> *"Article 6 - Right to a fair trial*
> *1. In the determination of his civil rights and obligations or any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.*

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

a. ***to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;***

b. ***to have adequate time and facilities for the preparation of his defence;***

c. *to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;*

d. *to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;*

e. *to have the free assistance of an interpreter if he can not understand or speak the language used in court."*

The Panel of Experts put all such elementary rights aside. (Cfr. Infra)

7.

The United Nations has only asked the Panel of Experts - and given a mandate to the Panel of Experts - to evaluate possible actions to be taken by the Security Council and to advise the

Security Council on recommendations to be made to the international community, meaning countries, in order to ensure the evolution of the peace process in the Democratic Republic of the Congo.

The Panel never received a mandate to attack private business people and / or companies.

The Panel of Experts also never even had the possibility to compel testimony or documents and never had any judicial authority whatsoever and recognised this explicitly.

This means that the Panel of Experts at most received some dubious information on a strictly voluntary basis and did not have any means to verify whatsoever with regard to such information that was given to them.

8.

Such judicial authority was given to the Belgian Senate's commission "*Great Lakes*", which in Belgium obtained similar authorities as a Judge of Instruction to perform an investigation.

Following the 3 reports of the Panel of Experts, this Belgian Investigating Commission of the Senate conducted an investigation and published its findings with a report on the 20th February 2003.

Parties were summoned and appeared before this Senate's Commission a.o. to give a declaration under oath.

After investigation, the Senate's Commission concluded the following:

> *"The Commission has noted that several companies and / or persons, mentioned in the UN-report, have not been heard on forehand, which jeopardizes their rights of defence.*
>
> *Moreover the work of the Commission was made more difficult in view of the fact that she was not provided with any evidence and / or indications that should support the allegations in the UN-reports."* (Free translation, report Senate Commission dd. 20 February 2003, p. 2 § 1)

Also:

> *"From the beginning of her activities, the Commission had been confronted with the lack of legal, sufficient and workable definitions in the UN-reports of the concepts "legal and illegal" and "plundering"."* (See report Belgian Senate's Commission dd. 20 February 2003, p. 7 § 5.1)

Also:

> *"Economic activities or trade with companies or persons in each of the territories in the DRC can in itself not be considered illegal."* (See report Senate's Commission dd. 20 February 2003, p. 7 § 5.3)
>
> *"The Commission asks the Government to insist with the United Nations to come to a more clear description of the concepts legal and illegal and of plundering of natural*

resources and this in view of further activities of the United Nations Panel." (See report Senate's Commission, p. 7 § 5.9)

And:

"The Commission has noted that the United Nations only issued embargos against countries like Angola, Sierra Leone and Liberia, and therefore trade with other countries and even conflict areas must be considered as legal." (See report Senate's Commission, p. 19 § 3.1.6.)

And:

"With regard to the allegations formulated by the UN Panel against a number of diamond companies that OECD-guidelines would not have been respected, the Commission states that (not withstanding the fact that only concerns guidelines that are not enforceable) such guidelines are not even applicable for the diamond companies concerned because they can not be considered as multinationals. Above that, the Commission is of the opinion that the UN Panel must clarify which aspects of guidelines would not have been respected." (See report Senate's Commission, p. 22 § 3.2.1)

And in conclusion:

"In this context and based on the available information, the Commission has to conclude that with regard to the concerned diamond companies no legal, incriminating elements can be found and that these diamond companies have acted in good faith." (See report Belgian Senate's Commission, p. 23)

The Belgian Senate's Commission also noted that the Panel of Experts was clearly not infallible, since the Panel of Experts already needed to clear names of companies they named and shamed without hesitation before:

> *"The Commission, based on available information, joins the consideration mentioned in the second UN-report where it is stated that the company (Arslanian Frères) was mentioned unjustly in the first report and therefore has cleared this company."* (See report Belgian Senate's Commission, p. 26, § 3.2.5.)

9.

Parties mentioned have as their most important activity the trade and / or the import and the export of diamonds.

They have had until the publication of the Report an irreproachable reputation in the diamond trade and this for many years.

The diamond trade in Antwerp is concentrated on a relatively small surface, being in practice 2 streets (Hoveniersstraat and Schupstraat) where all well-established companies that do business in diamonds are situated. It is a matter of common knowledge as well as an economic fact that the diamond trade in Antwerp (or elsewhere) fundamentally relies on confidence and *"hear-say"*.

A good reputation in the diamond trade is essential, even vital, for every diamond dealer or every company that does business in diamonds.

The reputation of parties mentioned has been irrevocably damaged by the Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and other forms of Wealth of the Democratic Republic of the Congo dd. 8 OCTOBER 2002 (S/2002/1146).

10.

In contradiction to what is stated or suggested in this report parties mentioned emphasize not to be conflict diamond dealers, or to be members of *"clans "* or associated with such clans, criminal organizations or criminal activities or to have done any illegal or unethical activity.

Every appearance of their name in the media with regard to the report - even while defending their name - only results in more unnecessary publicity and additional damage to the reputation.

Several international newspapers and other news channels have picked up the name of parties mentioned in respect to the report and negative publicity is unavoidable and beyond repair.

Banks have revoked and/or threatened to withdraw credit lines and major clients suspended all further transactions, afraid to be connected to someone so strongly accused by the United Nations where in fact the Panel is not the United Nations.

11.

It is a basis principle in any democratic state that persons who are accused have minimum rights to defend themselves.

In the report of the Panel of Experts, made public on the Internet, people and companies were named and accused without being heard and even without any reasonable possibility to reply.

For the record it can be noted, as general rules, that:

a) Parties mentioned have a respected business and do not deal in conflict diamonds or conduct any illegal or illegitimate activities;

b) Parties mentioned were not allowed to defend themselves with a full knowledge of the facts and minimal to be able to know some motive or fact that would make a minimum of control possible, quod non;

c) To avoid arbitrariness it is necessary that some concrete facts and elements, on which the allegations would be based, are at least retrievable, quod non;

d) Declaring without any proof or fact that parties mentioned would be conflict diamond dealers and or criminals or have done something illegal or unethical should be considered as an act of slander and defamation.

Parties mentioned refute categorically the baseless accusations and inform that:

a) They never received dialogue or information and/of documentation from the Panel of Experts.
b) Have never been heard or invited by the Prosecutor in Belgium, any police organization or any other authority
c) Have never been involved in any criminal or illegal activity
d) Have a legitimate business operation asserted by documents from the High Council and the Diamond Office in Antwerp, checked for the origin by the customs authorities and forwarded to the HRD Diamond Office Antwerp (Diamond High Council).
e) Are situated in the heart of Antwerp working closely with the most respectable representatives in the Diamond business

12.

It is unlikely that when a person or company stands accused by a Panel Report, a democratic Government would give support unless it is sure of your correctness whereas all imports from diamonds are legal and a full audit can be provided.

The definition of a conflict diamond itself could be rendered meaningless. According to the World Diamond Council a "conflict diamond" is a diamond imported in violation of law or resolutions of the United Nations, intended to end trade in diamonds extracted from "Conflict Regions". Obviously, having imported diamonds legally into Belgium and in accordance with UN resolutions makes a diamond not a conflict diamond according to the World Diamond Council or any other standard.

It should also be clear that parties mentioned are fully committed to the UN's position relating to conflict diamonds.

13.

Parties mentioned defend themselves with the firmness and the certitude of being wrongly accused.

It needs no argument that an enormous injustice is committed and it is a shame when, in the name of the United Nations, persons and companies are branded worldwide on the internet, merely based on rumors, false information or hearsay, without any further interest in the accuracy of the information that is spread or the severe consequences for the people involved.

In such case arbitrariness rules and everyone that is pointed at is declared an outlaw without any further defense.

Parties mentioned are well aware that representatives of Member States to principal and subsidiary organs of the United Nations enjoy immunity from legal process in respect of words spoken or written and all acts done in capacity as such a representative. Parties mentioned are also aware that, moreover, the United Nations also enjoys immunity from every form of legal process. That having been said, parties mentioned only requested the opportunity to present their defense, to have their arguments verified and <u>to be confronted</u> directly with any information that would be held against them and this was simply denied in breach with Resolution 1457 (2002) that <u>ordered</u> the Panel to do so.

14.

In the report of the Panel of Experts it is nowhere stated which *"evidence"* would allow to utter accusations against parties mentioned.

At most one is rendering a self-account, where one should accept that only information would have been used that has been confirmed by more than one source?

The Panel calls a summary of the allegations "evidence"…?

This way nothing more than *"belief"* is requested for the used working-method, without the necessary effort to show what *"reliable"* information would be at hand and what verifiable criteria would have been used.

It is also to easy to us the term *" known to intelligence services and police organizations "*
(See report § 34 page 9)

Of which services and organizations is the Panel talking about?

Parties mentioned have been living and working in Belgium for years at the same address in Antwerp, together with their family.

Parties mentioned have a clean criminal record, have never been accused of anything illegal by the authorities and have

never been invited to give any declaration or even answer any question by such authorities.

15.

There is a clear contradiction in the report.

If the information would be correct - which it is not - there would at least have been a disturbance in some way by Belgian or other authorities and at least someone would have been interrogated, accused or under investigation (if not arrested), quod non.

If the investigation of such criminal activities however, were to be held so secretive that they are only known to " intelligence services " it would be incredible to publish such secret information worldwide on the Internet in a report that is read by millions of people.

Parties mentioned can only base themselves on the certainty that they have not infringed any embargo or law and that they did not, neither directly, nor indirectly, nor in person, nor as a middleman, nor by means of companies or third parties, not in any other way of form dealt in so-called conflict diamonds or have been associated with any criminal or unethical activity.

A legal adage states *"negativa non sunt probanda"*, which means that negative facts cannot be proven.

The above-mentioned adage is based on the idea that it is practically impossible to give evidence of a negative fact.

How can someone (or a company) proof that he (it) did not do something during a well-defined period of time?

The only possibility that is available is to proof an opposite positive fact or a series of positive facts that can exclude the negative fact.

If parties mentioned would have been contacted before the publication of the report on the Internet, damage could have been avoided and parties mentioned would have been able to show on forehand that the information the Panel obtained was clearly false.

The Panel was invited on numerous occasions to provide a copy of one record of proof against parties mentioned, that cannot exist for the simple reason that parties mentioned did not do what they are accused of.

Providing a summary of allegations, made up by the Panel itself, and handing over one additional document, an official import license for one shipment, is no evident whatsoever.

This meets only the letter of the Resolution 1457, not the spirit!

16.

Parties mentioned have to suppose - for the time being - that the Panel should have received some information that has led to the mentioning of their names in the report.

Parties mentioned have to accept - for the time being - that wrong and false information has been provided, by which the

Panel could have been misled and bad intent cannot be excluded where such negative publicity favors some competitors.

Parties mentioned however are left in the dark and did not receive any information and/documentation and/or explanation from the Panel.

It is in the interest of the Panel to test the truthfulness and the reliability of the information received together with the requestors and based upon the data they provide.

On at least two occasions a Panel of Experts made wrong accusations in a report and a correction had to be made after presentation of the defense:

17.

In the first report, published on the Internet, of this Panel of Experts regarding the Democratic Republic of Congo dd. 12 April 2001 (S/2001/357) a firm ARSLANIAN FRERES NV was heavily accused as follows:

"*ARSLANIAN, **the conflict diamond dealers** in the Eastern Democratic Republic of the Congo, provided on average 2.000.000$ per year, each directly to the Congo desk …"*
(See Report Panel of Experts of 12 April 2001, p.29, nr. 127)

After ARSLANIAN FRERES NV defended itself on these accusations the name was completely removed from the final report and, on the contrary, in annex IV of the report the Panel of Experts expresses its **deep appreciation and gratitude** towards ARSLANIAN FRERES for having assisted the Panel of Experts in making the report (see annex IV report S/2002/1146)

ARSLANIAN FRERES was wrongfully accused and a correction was made, much to the honor of the Panel of Experts.

18.

The same happened with a firm called MACKIE DIAMONDS in Antwerp.

In the original report of the Panel of Experts regarding Angola it was stated:

"76. Azet Mohammed, who holds a British protected citizen passport, was arrested in March 2001. He was arrested for possession of a parcel of diamonds worth $100,000. Mohammed was described as the "lieutenant" of diamond dealer Ali Mackie Fouad Abess, of Mackie Diamonds in Antwerp, a Lebanese diamond dealer who was also a dealer in Sierra Leonean diamonds. Mackie, who holds a United States passport, began working in Angola in late 1999. He was deported from Angola for possession of false papers when Mohammed was arrested. Mackie's activities in Angola are under investigation."
(See letter Chairman Mr. Richard Ryan, Security Council Committee dd. 16.04.2001, p.20, nr. 76)

Also these accusations were proven completely false and - after presentation of the defense - were corrected in a following report :

"Correction

221.Contrary to the information contained in paragraph 76 of the Mechanism's previous report (S/2001/363), there is no person know as Ali Mackie Fouad Abess. Mr. Ali Mackie, who has never been known by name or nickname as Fouad Abess, does not have any relationship with Mohammed Azet. Mr. Ali Mackie, a Belgian citizen of Lebanese origin, is the owner and director of Mackie Diamonds in Antwerp. He does not possess a United States passport. He was neither arrested in, nor deported from, Angola. While Mr. Mackie had business interests in Angola prior to 2000, the Angolan authorities have not reported any investigation into his activities in Angola."
(See UN report on Angola S/2001/966 dd. 12 October 2001, p.43, par. 221)

At least these two clear examples prove that there certainly is a possibility that wrongful accusations were uttered and corrections are necessary.

19.

In spite of the damage that was done parties mentioned wanted to accept - for the time being - that the Panel acted in good faith and that it only concluded upon false, faulty or wrong information that has been given to them, if such information exists.

To avoid arbitrariness it is necessary that the concrete facts and elements on which the allegation is based, are at least retrievable, quod non

At least parties mentioned should have been allowed to defend themselves with a full knowledge of the facts and minimal to

be able to know some motive that would make a minimum of control or contradiction possible, quod non

I presume every reasonable man should agree that arbitrariness is unacceptable.

From a normal cautious and careful person it can be expected that he seeks the truth by controlling his facts as much as possible and that he refrains from spreading rumors that could damage a party if he is not able to show the truthfulness of such rumors

20.

Declaring in public without being able to provide any proof or fact that parties mentioned would be involved in illegal or unethical activities would constitutes a crime of slander and defamation according to standards of many legislation, not only Belgian law.

Parties mentioned could accept that the original goal of the Panel is a noble goal that deserves all means and attention but on the other side this does not mean that all elementary principles of law can be put aside and companies or persons can be branded based only on mere malicious rumors and allegations.

In such case we honestly speak of a witch-hunt, were arbitrariness rules and everyone that is pointed at is declared an outlaw without any further defense.

The term witch hunt is not farfetched if there is no control on the investigation, if there is an absolute immunity for the

prosecutors, a complete anonymity regarding alleged sources of information, no necessity to present evidence, no possibility of contradiction, no possibility to defend or reply and in the end the accused is asked to accept what is to him only a pattern of slander and defamation.

The Panel should not be allowed to hide behind the so-called safety of it sources and therefore being capable of providing no evidence whatsoever and to consider itself unbound by any due process of law.

When in the medieval age the Inquisition wanted to protect a witness who was ready to testify that he/she had seen a suspect communicating with the devil the witness was allowed to appear in court with a mask, or hood, over the face. This was how the court heard the "*truth*", and the witness was protected from the evil eye of the witch who might take revenge after being burned at the stake.

What can not be allowed, if we do not want to turn back the clock 500 years, under any circumstances is the permanent concealment of the identity of so-called witnesses, neither the refusal to present any document or the content of any declaration whatsoever and this on "*grounds of confidentiality*"

One can ask what kind of witness would exist that can give the Panel confidential information and then can refuse to answer further questions as to how such information was obtained or even the accused to verify the content of a declaration.

Going on the statements of the Panel itself as a rule this could be an undercover agent, who have been necessarily

operating illegally in foreign countries in order to collect information that cannot be obtained by regular means.

It is clear that such "*evidence*" can not be excepted as valid and such clandestine witnesses can not be believed at all, more over where it is not even certain that the Panel is basing itself only on information received from undercover agents but could also exclusively be receiving very dubious information from competitors of parties concerned or any other party with an interest to damage parties concerned.

The court in Antwerp, which can be quoted as follows, gave a relevant judgment:

> *"By the public prosecutor no further information is given, nor is there a document rendered regarding the fact. In a former cession already a postponement was given in order to obtain permission from the State's Security Services to deliver documents in order to be able to judge the related, serious facts. For one reason or another no documents are rendered.*
> ***It is unacceptable that certain facts are quoted by the State's Security Services without producing any document of whatsoever to substantiate this allegation and without any right of the concerned person to defend himself.***
> ***Such an attitude witnesses an unacceptable disapproval for the rights of defense. As much unacceptable is the fact that the court would be expected to judge a person without the judge even being able to render any control or to be able to judge a fact that is quoted against the concerned person…"*** (See Rb. Eerste Aanleg Antwerp, 12 February 2001, ongepubl., Seber / OM).

It is of course unacceptable that any Panel would be able to give unfounded allegations from a position of complete anonymity and immunity towards companies and persons and that these accused companies of persons should be sanctioned or even threatened in their existence, without any appropriate right of defense, especially if this is done under the name of the United Nations.

21.

JEWEL IMPEX BVBA is a company that imports en exports diamonds and which was started on the 19th of March 1998. The main activity is to import polished diamonds from India and the United States of America and buying rough diamonds in Antwerp, Belgium.

With regard to JEWEL IMPEX BVBA there were only five exceptional imports from DRC with an invoice from a company called MBC further total unknown to JEWEL IMPEX BVBA.

These very limited imports were done in 2001 between the 10th of March 2001 and the 25th of May 2001.

These imports are neglectable in view of the total turnover of the company.

For the year 2001 the total turnover of the company was 4.674.352,94 USD.

A former client of JEWEL IMPEX BVBA bought the goods in 2001 in the DRC.

Since JEWEL IMPEX BVBA had never worked or been in the DRC, JEWEL IMPEX BVBA was not acquainted with the political climate

in the DRC and did not know the company MBC or any other person or company working in the DRC.

These very limited transactions were done in good faith.

22.

Parties mentioned were ready to be confronted with each document, declaration or any other information that would have given rise to the mentioning of their name and the incorrect accusations coupled hereto and from which confrontation it would have been crystal clear that the requestors have been wrongly accused.

In breach with Resolution 1457 (2003) of the Security Council the Panel of Experts refused to provide any documentation and /or information as it was ordered to by the Security Council to do before 31 March 2003 and did not comply with it, not to the letter and certainly not to the spirit of the Resolution.

The only conclusion can be that the name of parties concerned should be cleared and explicit correction should be published.

Yours Sincerely,
For the requestors, their Attorney at law,

Mr. M. De Block
Antwerp, 27th of May 2003

From the desk of Mr. Marc De Block
Attorney at law
Antwerp - Belgium

Reaction No. 42

FINAL ATTACHMENT TO REPORT PANEL OF EXPERTS ON DRC

On behalf of NV SIERRA GEM DIAMONDS

To the attention of

SECURITY COUNCIL UNITED NATIONS

PANEL OF EXPERTS

UNITED NATIONS

EXPNATDRC/UNON

REF: Resolution 1457/2003

AT THE REQUEST OF:

1. **Mr. Nazem AHMAD**, with chosen domicile at the office of his counsel and

2. a company according to Belgian law, the company **NV SIERRA GEM DIAMONDS**, with registered office at Hoveniersstraat 30, 2018 Antwerp

(Hereinafter called "*parties mentioned*")

Represented by Mr. Marc De Block, attorney at law in Belgium, having his office Vlaamse Kaai 54-57 at 2000 Antwerp, Belgium.

1.

The Panel of Experts on the Illegal Exploitation of Natural Resources and other Forms of Wealth in the Democratic Republic of the Congo was appointed on request of the Security Council dated **2 June 2000** (S/REST/2000/20)

The original mandate of the Panel was:

- to follow up on reports and collect information on all activities of illegal exploitation of natural resources and other forms of wealth of the Democratic Republic of the Congo, including the violation of the sovereignty of that country;
- to research and analyze the links between the exploitation of the natural resources and other forms of wealth in the Democratic Republic of the Congo and the continuation of the conflict;
- to revert to the Council with recommendations. (S/2001/357, p. 3)

A first report was published the **12th of April 2001** (S/2001/357).

The Panel's mandate was extended until the **30th November 2001** (S/2001/951).

A second report was published the **13th November 2001** (S/2001/1072).

A third report was published the **16th October 2002** (S/2002/1146).

The Security Council took a new resolution on the **24th January 2003** (Resolution 1457/S/RES/1457/2003)

Following the text of Resolution 1457 (2003) of the Security Council dd. 24/01/2003, the Panel of Experts was explicitly requested ***"to provide parties concerned, all information and documentation, connecting them to the illegal exploitation of the Democratic Republic of the Congo's natural resources and/or as being in contravention with OECD-guidelines".***

A first deadline was set before the **31st of March 2003**, whereas the Panel would then have to publish our reactions as an attachment to their report, no later than 15th of April 2003.

Arguments however had to be deposited without having received any information and/or documentation from the Panel before the 31st of March.

Just before expiration of the deadline of 30th of March 2003 the Panel of Experts asked and obtained (for itself) an extension from the Security Council to provide such information / documentation, this time before the end of May 2003.

Following this Resolution 1457 - the defense notes on behalf of parties concerned, were already sent **on 24th of March with request to publish these before 15 April 2003 as annex to the Report in accordance with Resolution 1457.**

In view of the fact that we didn't receive any information and / or documentation - and this despite numerous requests - from the Panel - and this in breach with the resolution - the defense remained limited.

As from the same day, the **24 March 2003** a Note was published on the Internet by the President of the Security Council stating:

> "Following consultations among the members of the Security Council, they have decided, in order to give more time to the individuals, companies and States wishing to send to the Secretariat their reactions to the findings of the last report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo (S/2002/1146), to extend the deadlines set out in paragraph 11 of Security Council resolution 1457 (2003) of 24 January 2003. Those individuals, companies and States named in the Panel's last report are invited to send their reactions to the Secretariat no later than 31 May 2003, in order for these reactions to be published no later than 20 June 2003."

The Panel **did not attempt to visit or hear people and companies they named and shamed in their reports and this since 2nd June 2000 or being a period of almost three years... !**

According to the Decisions of the Court of Human Rights (Hof Mensenrechten) (3e afd.) nr. 29731/96, 13 February 2001 (Krombach / Frankrijk), the right of everyone charged to be effectively defended and represented by a lawyer, assigned officially if need be, is fundamental and according to

Articles 6 §§ 1 and 3 (c) of the Convention on Human Rights has the right to defend himself in person or... **through legal assistance of his own choosing.**

Invitations by the Panel to finally come to Nairobi, Kenya was first sent 9th April 2003 and this to come to Nairobi between 14 and 30 April 2003!

The Panel had to know - and was even informed explicitly - that many or most diamond offices in Belgium were closed for the Easter Holidays in this exact period and would not reopen until 28 of April 2003.

10 to 12 people had to stop all their normal activities and had to rush to Nairobi from all over the world on request of the Panel and this in such a period, on such short notice after the Panel had three years to invite, hear and or see anyone, anywhere they liked.

Translators, they were told, they could find for themselves and it was mentioned that also "*lawyers were welcome*".

The Panel stated further:

> ***"The degree of cooperation already developed between...and the Panel suggests that this meeting could produce positive outcomes, including arriving quickly at a mutually satisfactory solution to this matter..."***

Stating that " *information* " could only be handed over for review in face-to-face meetings made such proceedings a charade. Under such pretext no reasonable control or contradiction of information was reasonably possible and it entitled the Panel to show whatever they wanted and to give any explanation they want in a report afterwards on what they so-called presented as information.

My clients did not want to be made part of such kind of simulation, as it appeared only intended to give the Panel a formal opportunity to write in a final Report that all people and companies were invited, seen and heard and confronted with " evidence" in face to face meetings, while in reality no such real possibility of verification, contradiction and/or marginal control on any information was rendered.

Representation by an attorney or any other means of communication were rejected and this despite efforts from the Belgian Ministry of Economic Affairs to send information / documentation through their diplomatic services.

The Panel stated on forehand that no documentation or information would be given to anyone unless they personally came to Kenya. The Panel would not grant any meetings with legal representation unless one or more of his clients in person accompanied the attorney.

All parties concerned were obliged to travel in person to Nairobi as from the 23rd of April 2003.

Very limited appointments were granted and to each party was given approximately 5 to 10 minutes time, although the Panel alleges it speed "*5 hours*" in total on 9 different parties…

Relevant is that no explanation whatsoever was given by the Panel and the Panel handed over its so-called "*evidence*".

What the Panel called "*evidence*" could be regarded as completely ridiculous if the case was not so tragic.

Each party was given **one** (1) page, typed by the Panel of Experts itself and only containing a **summary** of the accusations itself.

So the Panel wants to present as evidence a summary made by itself of the accusations it made.

Parties concerned were asked to sign this document after which they could receive a copy.

If they refused to sign, they could not get a copy.

It is clear that until today the Panel of Experts has not respected the resolutions of the Security Council and has not provided any information and/of documentation as it was requested to do by the Security Council.

The composition of the Panel was changed during the reports and different people and companies were named and shamed in the different reports.

2.

All reports of the Panel of Experts were immediately published on the Internet and therefore considered to be authoritative and trustworthy, although the United Nations itself had no control over the content of such reports.

Banks in Belgium closed accounts, the R.C. President Kabila fired several government officials implicated by a Panel and third parties like the Beers asked clients not to deal with companies accused in the report of the Panel of Experts.

The result for people and companies mentioned was devastating.

The Panel of Experts never published or rendered any evidence or even information on which it based its findings and this despite numerous requests by parties mentioned in the report, by governments, national prosecutors and even a Senate Committee.

The Panel of Experts never gave any information about general guidelines it would have is used for making such reports or required standards of proof it utilized.

Only at the very last moment a document was created and given and this only to enable the Panel to say that "*documentation*" was given, quod non.

The practice of "*naming and shaming*" is unworthy for the United Nations and did not even follow elementary guidelines or general principles of law or ethics.

The Panel of Experts never even set out any ethical guidelines it might have used or created any mechanism of communication to consult with member states, other organizations or parties mentioned in their reports.

The Panel did not attempt to visit or hear people and companies they named and shamed in their reports and many parties rightfully expressed their outrage that the Panel of Experts:

* failed to contact parties mentioned or even to ask for their comments and
* never publicized any shred of evidence leading to their conclusions or made such evidence available to parties

concerned, or at least to member states and their judicial authorities.

These comments still stand today.

It should be clear to any reasonable man that grave allegations should be backed by high evidentiary standards, quod non.

The Panel of Experts did not use such standards.

There was not even a procedure that allowed people or companies that had been accused to even know what kind of evidence was used where the Panel of Experts just preferred to publicly tarnish and destroy the reputation of a great number of companies and people.

As it was mentioned from the outset by the Panel itself, the principle of naming and shaming was "*high on their priority list*" and this without any explanation, any reasonable standard or any right of defense.

The danger of accusations made without a due process are clear and such accusations not only damage the people and companies involved, but also undermine the credibility of the United Nations past, present and future panels.

The company of Belgian Law, NV SIERRA GEM DIAMONDS, whereof Mr. NAZEM AHMAD is managing director, has as its most

important activity the trade, the import and the export of rough diamonds.

Both Mr. NAZEM AHMAD in person, as well as the company NV SIERRA GEM DIAMONDS has had until today an irreproachable reputation in the diamond trade and this for many years.
The family of NAZEM AHMAD has a long history of diamond business:

The grandfather of Mr. NAZEM AHMAD started the diamond business in Sierra Leone.

The father of Mr. NAZEM AHMAD, Mr. SAID AHMAD, together with his family, emigrated to the diamond center of Antwerp Belgium in 1975, and worked there as an independent diamond trader until 1980. In 1980 the company SIERRA GEM DIAMONDS NV was founded with his brother Mr. AHMAD AHMAD. The two brothers named their company after Sierra Leone because the diamond business originally was founded there in the beginning of the 20th century by their grandfather.

In 1985 the two brothers split and Mr. AHMAD AHMAD founded a separate company TRIPLE A DIAMONDS NV, whereas Mr. SAID AHMAD remained with the company SIERRA GEM DIAMONDS NV.

There are without doubt many family members and people with the name AHMAD active in the diamond business. In SIERRA GEM DIAMONDS NV however only Mr. NAZEM AHMAD was active together with his father and two of his brothers, being Mr. HUSSEIN AHMAD and HASSAN AHMAD.

One brother Mr. HUSSEIN AHMAD (who studied medicine in Egypt) died at an early age of cancer, at which moment the father stopped his professional activities.

Mr. NAZEM AHMAD remained in the company SIERRA GEM DIAMONDS NV together with his brother Mr. HASSAN AHMAD until they split in 2001. Since 2001 Mr. NAZEM AHMAD is the only one left running the company SIERRA GEM DIAMONDS NV.

There is no such thing as a " *clan AHMAD.* " to which Mr. NAZEM AHMAD would belong.

The report mentions even three clans, namely " *the three clans Ahmad,* ***Nassour and Khanafer*** " (§ 34 page 9)

It is not clear if the Panel of Experts wants to suggest if such three " *clans* " would work together but a normal reading suggests this.

All clients can remark is that they do not have (and never had) any personal or business relationship with any one named NASSOUR.

Also with regard to the name KHANAFER clients do not have (and never had) any personal or business relationship and, to the best of their knowledge, never even had any contact with a person of such name.

The suggestion of clients making up a " *clan* " or " *criminal organization* " with such people is outrageous.

The name AHMAD was mentioned in general and the allusion was created that anyone named AHMAD, being of Lebanese

nationality, and involved in diamond business is a criminal, a conflict diamond dealer and part of a criminal organization.

The Panel uses the word " *clans* " between brackets and then ties to it the name AHMAD, saying no less then that anyone carrying such name must belong to a family circle that must be regarded as being a criminal organization. Suddenly carrying a name or being a relative is in itself sufficient to be branded as a criminal of the worst kind.

Not the smallest distinction or specification is made although the name AHMAD is the most common name in eastern countries practically as " *Jones* " or " *Smith* " would be in the United States. It is unbelievable that everyone with the name AHMAD can be so easily tarnished as being part of a " *clan* " and where at least - should any evidence exist - the Panel should have pointed out which individuals they accused instead of accusing a whole family tree or a family name… (Cfr. infra)

Also after Resolution 1457 the Panel never gave any explanation on why and how OECD-guidelines would have been broken by SIERRA GEM DIAMONDS.

3.

The practice of "*naming and shaming*" as the Panel of Experts used it contravenes to the following articles in the Universal Declaration of Human Rights:

PREAMBLE

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts, which have outraged the conscience of mankind, and the advent of a world, in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

...

Article 2.

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

....

Article 6.

Everyone has the right to recognition everywhere as a person before the law.

Article 7.

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 10.

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11.

(1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense.

(2) No one shall be held guilty of any penal offence on account of any act or omission, which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12.

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks.

The refusal to give any opportunity to be heard on forehand and to give any defense afterwards or to be provided with any documentation and/or information is a flagrant violation of the above articles of the Universal Declaration of Human Rights.

It is also in violation of similar articles in the Pact of New York and the European Treaty on Human Rights.

4.

Immediately upon publication of the report, the Panel of Experts was requested numerous times to give even the smallest opportunity to present a defense.

The legal counsel requested an opportunity at any given place, time and date to present a defense and to be provided with any documents and / or information on the following occasions:

* fax messages 28 October 2002 (6)
* fax messages 6 November 2002, fax to United Nations 7 November 2002, fax to United Nations 13 November 2002 (3)
* E-mail 21 November 2002, e-mail 25 November 2002, visit New York 18 November 2002, e-mail 3 December 2002, e-mail 10 December 2002

Parties mentioned never received any documentation and / or information or any reasonable opportunity to present their defense before the Panel of Experts.

Only at the last moment the Panel mad a futile attempt to enable itself tot state that "*the letter*" of Resolution 1457 would have been respected, quod non (see supra).

5.
Resolution 1457 (2003) stated clearly:

> *"9. Stresses that the new mandate of the Panel should include:*
>
> - *Further review of relevant data and analysis of information previously gathered by the Panel, as well as any new information, including specifically material, provided by individuals and entities named in the previous reports of the Panel, in order to verify, reinforce and, where necessary, update the Panel's findings,* ***and/or CLEAR parties named in the Panel's previous reports, with a view to adjusting accordingly the lists attached to these reports;***

11. Invites, in the interests of transparency, individuals, companies and States, which have been named in the Panel's last report to send their reactions, with due regard to commercial confidentiality, to the Secretariat, ***no later than 31 March 2003****, and requests the Secretary-General to arrange for the publication of these reactions, upon request by individuals, companies and States in the report of 15 October 2002, as an attachment to this report,* ***no later than 15 April 2003****;*

12. Stresses the importance of dialogue between the Panel, individuals, companies and States and ***requests in this regard that the Panel provide to the individuals, companies and States names, upon request, all information and documentation connecting them to the illegal exploitation of the Democratic Republic of the Congo's natural resources****, and requests the Panel to establish a Procedure to provide the Member States, upon request, information previously collected by the Panel to help them take the necessary investigative action, subject to the Panel's duty to preserve the safety of its sources, and in accordance with United Nations established practice in consultation with the United Nations Office of Legal Affairs."*

Following this resolution of the Security Council parties **(again)** asked the United Nations and especially the Panel of Experts to be provided with such documentation and / or information in order to be able to present such defense before the deadline of the 31st of March 2003 and in respect of Resolution 1457 (2003) and this was refused.

Not-limited, the following fax messages and e-mails were send by legal counsel to request such documentation and / or information: fax messages 29 January 2003 (3), e-mail 29 January 2003 (6), e-mail 6 February 2003 (4), e-mail 26 February 2003, e-mail 10 March 2003, e-mail 26 February 2003, e-mail 10 March 2003, fax messages 10 March 2003 (3), e-mail 11 March 2003 (3), e-mail 14 March 2003, fax message 17 March 2003, e-mail 17 March 2003 (2).

Legal counsel of client visited New York to meet with one Panel member, Mr. Bruno CHIEMSKY on the 19 March 2003, but was further denied any documentation or information at this occasion.

The Panel of Experts did not respect the Resolution of the Security Council 1457 (2003), namely to respect the deadline to provide documentation and / or information regarding parties mentioned in the Report and this before the 31st of March 2003 so consequently parties mentioned had nothing to defend themselves on at that time.

Parties mentioned did respect Resolution 1457 (2003).

It is clear that the Panel of Experts also did not respect Resolution 1457 after the extension it obtained from the Security Council.

There is a difference between providing real information and documentation or just pretending to give such information and documentation where in reality the Panel was only interested in being able to **formally** allege that they respected the Resolution 1457, quod non.

Giving a "*summary*" of allegations is not giving any information and/or documentation at all.

6.

Parties have even presented themselves before the Public Prosecutors in Belgium and this strictly on their own initiative in order to ask the Public Prosecutor to start an investigation in order to clear their names. An unorthodox request to be provided with justice.

The Panel of Experts never provided <u>any</u> documentation and / or information to such judicial authority in Belgium or any other country.

Parties are not only confronted with a despicable method of "*naming and shaming*" but were even refused to verify any information and / or documentation and thus to be informed promptly of the causes of the accusations made against them and a fortiori to have any adequate time or facilities for the preparation of any accurate reply.

I further refer to article 8, 10 and 11 of the Universal Declaration of Human Rights and especially article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms:

> *"Article 6 – Right to a fair trial*
> *1. In the determination of his civil rights and obligations or any criminal charge against him, <u>everyone is entitled to a fair and public hearing within a</u>*

reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

a. ***to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;***
b. ***to have adequate time and facilities for the preparation of his defence;***
c. *to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;*
d. *to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;*
e. *to have the free assistance of an interpreter if he can not understand or speak the language used in court."*

The Panel of Experts put all such elementary rights aside. (Cfr. infra)

7.

The United Nations has only asked the Panel of Experts - and given a mandate to the Panel of Experts - to evaluate possible actions to be taken by the Security Council and to advise the Security Council on recommendations to be made to the international community, meaning countries, in order to ensure the evolution of the peace process in the Democratic Republic of the Congo.

The Panel never received a mandate to attack private business people and / or companies.

The Panel of Experts also never even had the possibility to compel testimony or documents and never had any judicial authority whatsoever and recognised this explicitly.

This means that the Panel of Experts at most received some dubious information on a strictly voluntary basis and did not have any means to verify whatsoever with regard to such information that was given to them.

8.

Such judicial authority was given to the Belgian Senate's commission "*Great Lakes*", which in Belgium obtained similar authorities as a Judge of Instruction to perform an investigation.

Following the 3 reports of the Panel of Experts, this Belgian Investigating Commission of the Senate conducted an investigation and published its findings with a report on the 20th February 2003.

Parties were summoned and appeared before this Senate's Commission a.o. to give a declaration under oath.

After investigation, the Senate's Commission concluded the following:

> *"The Commission has noted that several companies and / or persons, mentioned in the UN-report, have not been heard on forehand, which jeopardizes their rights of defence.*
>
> *Moreover the work of the Commission was made more difficult in view of the fact that she was not provided with any evidence and / or indications that should support the allegations in the UN-reports."* (Free translation, report Senate Commission dd. 20 February 2003, p. 2 § 1)

Also:

"From the beginning of her activities, the Commission had been confronted with the lack of legal, sufficient and workable definitions in the UN-reports of the concepts "legal and illegal" and "plundering"." (See report Belgian Senate's Commission dd. 20 February 2003, p. 7 § 5.1)

Also:

"Economic activities or trade with companies or persons in each of the territories in the DRC can in itself not be considered illegal." (See report Senate's Commission dd. 20 February 2003, p. 7 § 5.3)

"The Commission asks the Government to insist with the United Nations to come to a more clear description of the concepts legal and illegal and of plundering of natural resources and this in view of further activities of the United Nations Panel." (See report Senate's Commission, p. 7 § 5.9)

And:

"The Commission has noted that the United Nations only issued embargos against countries like Angola, Sierra Leone and Liberia, and therefore trade with other countries and even conflict areas must be considered as legal." (See report Senate's Commission, p. 19 § 3.1.6.)

And:

"With regard to the allegations formulated by the UN Panel against a number of diamond companies that OECD-guidelines would not have been respected, the Commission states that (not withstanding the fact that only concerns guidelines that are not enforceable) such guidelines are not even applicable for the diamond companies concerned because they can not be considered as multinationals. Above that, the Commission is of the opinion that the UN Panel must clarify which aspects of guidelines would not have been respected." (See report Senate's Commission, p. 22 § 3.2.1)

And in conclusion:

"In this context and based on the available information, the Commission has to conclude that with regard to the concerned diamond companies no legal, incriminating elements can be found and that these diamond companies have acted in good faith." (See report Belgian Senate's Commission, p. 23)

The Belgian Senate's Commission also noted that the Panel of Experts was clearly not infallible, since the Panel of Experts already needed to clear names of companies they named and shamed without hesitation before:

"The Commission, based on available information, joins the consideration mentioned in the second UN-report where it is stated that the company (Arslanian Frères) was mentioned unjustly in the first report and therefore has

cleared this company." (See report Belgian Senate's Commission, p. 26, § 3.2.5.)

9.

Parties mentioned have as their most important activity the trade and / or the import and the export of diamonds.

They have had until the publication of the Report an irreproachable reputation in the diamond trade and this for many years.

The diamond trade in Antwerp is concentrated on a relatively small surface, being in practice 2 streets (Hoveniersstraat and Schupstraat) where all well-established companies that do business in diamonds are situated. It is a matter of common knowledge as well as an economic fact that the diamond trade in Antwerp (or elsewhere) fundamentally relies on confidence and *"hear-say"*.

A good reputation in the diamond trade is essential, even vital, for every diamond dealer or every company that does business in diamonds.

The reputation of parties mentioned has been irrevocably damaged by the Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and other forms of Wealth of the Democratic Republic of the Congo dd. 8 OCTOBER 2002 (S/2002/1146).

10.

In contradiction to what is stated or suggested in this report parties mentioned emphasize not to be conflict diamond dealers, or to be members of *"clans "* or associated with such clans, criminal organizations or criminal activities or to have done any illegal or unethical activity.

Every appearance of their name in the media with regard to the report - even while defending their name - only results in more unnecessary publicity and additional damage to the reputation.

Several international newspapers and other news channels have picked up the name of parties mentioned in respect to the report and negative publicity is unavoidable and beyond repair.

Banks have revoked and/or threatened to withdraw credit lines and major clients suspended all further transactions, afraid to be connected to someone so strongly accused by the United Nations where in fact the Panel is not the United Nations.

11.

It is a basis principle in any democratic state that persons who are accused have minimum rights to defend themselves.

In the report of the Panel of Experts, made public on the Internet, people and companies were named and accused without any reasonable possibility to reply.

For the record it can be noted, as general rules, that:

a) Parties mentioned have a respected business and do not deal in conflict diamonds or conduct any illegal or illegitimate activities;

b) Parties mentioned were not allowed to defend themselves with a full knowledge of the facts and minimal to be able to know some motive or fact that would make a minimum of control possible, quod non;

c) To avoid arbitrariness it is necessary that some concrete facts and elements, on which the allegations would be based, are at least retrievable, quod non;

d) Declaring without any proof or fact that parties mentioned would be conflict diamond dealers and or criminals or have done something illegal or unethical should be considered as an act of slander and defamation.

Parties mentioned refute categorically the baseless accusations and inform that:

a) They never received dialogue or information and/of documentation from the Panel of Experts.
b) Have never been heard or invited by the Prosecutor in Belgium, any police organization or any other authority
c) Have never been involved in any criminal or illegal activity
d) Have a legitimate business operation asserted by documents from the High Council and the Diamond Office in

Antwerp, checked for the origin by the customs authorities and forwarded to the HRD Diamond Office Antwerp (Diamond High Council).

e) Are situated in the heart of Antwerp working closely with the most respectable representatives in the Diamond business

12.

It is unlikely that when a person or company stands accused by a Panel Report, a democratic Government would give support unless it is sure of your correctness whereas all imports from diamonds are legal and a full audit can be provided.

The definition of a conflict diamond itself could be rendered meaningless. According to the World Diamond Council a "*conflict diamond*" is a diamond imported in violation of law or resolutions of the United Nations, intended to end trade in diamonds extracted from "Conflict Regions". Obviously, having imported diamonds legally into Belgium and in accordance with UN resolutions makes a diamond not a conflict diamond according to the World Diamond Council or any other standard.

It should also be clear that parties mentioned are fully committed to the UN's position relating to conflict diamonds.

13.

Parties mentioned defend themselves with the firmness and the certitude of being wrongly accused.

It needs no argument that an enormous injustice is committed and it is a shame when, in the name of the United Nations, persons and companies are branded worldwide on the internet, merely based on rumors, false information or hearsay, without

any further interest in the accuracy of the information that is spread or the severe consequences for the people involved.

In such case arbitrariness rules and everyone that is pointed at is declared an outlaw without any further defense.

Parties mentioned are well aware that representatives of Member States to principal and subsidiary organs of the United Nations enjoy immunity from legal process in respect of words spoken or written and all acts done in capacity as such a representative. Parties mentioned are also aware that, moreover, the United Nations also enjoys immunity from every form of legal process. That having been said, parties mentioned only requested the opportunity to present their defense, to have their arguments verified and to be confronted directly with any information that would be held against them and this was simply denied in breach with Resolution 1457 (2002) that ordered the Panel to do so.

14.

In the report of the Panel of Experts it is nowhere stated which *"evidence"* would allow to utter accusations against parties mentioned.

At most one is rendering a self-account, where one should accept that only information would have been used that has been confirmed by more than one source?

The Panel calls a summary of the allegations "evidence"...?

This way nothing more than *"belief"* is requested for the used working-method, without the necessary effort to show what *"reliable"* information would be at hand and what verifiable criteria would have been used.

It is also to easy to us the term *" known to intelligence services and police organizations "*
(See report § 34 page 9)

Of which services and organizations is the Panel talking about?

Parties mentioned have been living and working in Belgium for years at the same address in Antwerp, together with their family.

Parties mentioned have a clean criminal record, have never been accused of anything illegal by the authorities and have never been invited to give any declaration or even answer any question by such authorities.

15.
There is a clear contradiction in the report.

If the information would be correct - which it is not - there would at least have been a disturbance in some way by Belgian or other authorities and at least someone would have been interrogated, accused or under investigation (if not arrested), quod non.

If the investigation of such criminal activities however, were to be held so secretive that they are only known to *"intelligence services"* it would be incredible to publish such secret information worldwide on the Internet in a report that is read by millions of people.

Parties mentioned can only base themselves on the certainty that they have not infringed any embargo or law and that they did not, neither directly, nor indirectly, nor in person, nor as a middleman, nor by means of companies or third parties, not in any other way of form dealt in so-called conflict diamonds or have been associated with any criminal or unethical activity.

A legal adage states *"negativa non sunt probanda"*, which means that negative facts cannot be proven.

The above-mentioned adage is based on the idea that it is practically impossible to give evidence of a negative fact.

How can someone (or a company) proof that he (it) did <u>not</u> do something during a well-defined period of time?

The only possibility that is available is to proof an opposite positive fact or a series of positive facts that can exclude the negative fact.

If parties mentioned would have been contacted before the publication of the report on the Internet, damage could have been avoided and parties mentioned would have been able to show on forehand that the information the Panel obtained was clearly false.

The Panel was invited on numerous occasions to provide a copy of one record of proof against parties mentioned, that cannot exist for the simple reason that parties mentioned did not do what they are accused of.

Providing a summary of allegations, made up by the Panel itself, and handing over one additional document, an official import license for one shipment, is no evident whatsoever.

This meets only the letter of the Resolution 1457, not the spirit!

16.

Parties mentioned have to suppose - for the time being - that the Panel should have received some information that has led to the mentioning of their names in the report.

Parties mentioned have to accept - for the time being - that wrong and false information has been provided, by which the Panel could have been misled and bad intent cannot be excluded where such negative publicity favors some competitors.

Parties mentioned however are left in the dark and did not receive any information and/documentation and/or explanation from the Panel.

It is in the interest of the Panel to test the truthfulness and the reliability of the information received together with the requestors and based upon the data they provide.

On at least two occasions a Panel of Experts made wrong accusations in a report and a correction had to be made after presentation of the defense:

17.

In the first report, published on the Internet, of this Panel of Experts regarding the Democratic Republic of Congo dd. 12 April 2001 (S/2001/357) a firm ARSLANIAN FRERES NV was heavily accused as follows:

"*ARSLANIAN, **the conflict diamond dealers** in the Eastern Democratic Republic of the Congo, provided on average 2.000.000$ per year, each directly to the Congo desk …*"
(See Report Panel of experts van 12 April 2001, p.29, nr. 127)

After ARSLANIAN FRERES NV defended itself on these accusations the name was completely removed from the final report and, on the contrary, in annex IV of the report the Panel of Experts expresses its **deep appreciation and gratitude** towards ARSLANIAN FRERES for having assisted the Panel of Experts in making the report (see annex IV report S/2002/1146)

ARSLANIAN FRERES was wrongfully accused and a correction was made, much to the honor of the Panel of Experts.

18.

The same happened with a firm called MACKIE DIAMONDS in Antwerp.

In the original report of the Panel of Experts regarding Angola it was stated:

"76. Azet Mohammed, who holds a British protected citizen passport, was arrested in March 2001. He was arrested for possession of a parcel of diamonds worth $100,000. Mohammed was described as the "lieutenant" of diamond dealer Ali Mackie Fouad Abess, of Mackie Diamonds in Antwerp, a Lebanese diamond dealer who was also a dealer in Sierra Leonean diamonds. Mackie, who holds a United States passport, began working in Angola in late 1999. He was deported from Angola for possession of false papers when Mohammed was arrested. Mackie's activies in Angola are under investigation."

(See letter Chairman Mr. Richard Ryan, Security Council Committee dd. 16.04.2001, p.20, nr. 76)

Also these accusations were proven completely false and - after presentation of the defense - were corrected in a following report.:

"Correction

221.Contrary to the information contained in paragraph 76 of the Mechanism's previous report (S/2001/363), there is no person know as Ali Mackie Fouad Abess. Mr. Ali Mackie, who has never been known by name or nickname as Fouad Abess, does not have any relationship with Mohammed Azet. Mr. Ali Mackie, a Belgian citizen of Lebanese origin, is the owner and director of Mackie Diamonds in Antwerp. He does not possess a United States passport. He was neither arrested in, nor deported from, Angola. While Mr. Mackie had business interests in Angola prior to 2000, the Angolan authorities have not reported any investigation into his activities in Angola."

(See UN report on Angola S/2001/966 dd. 12 October 2001, p.43, par. 221)

At least these two clear examples prove that there certainly is a possibility that wrongful accusations were uttered and corrections are necessary.

19.

In spite of the damage that was done parties mentioned wanted to accept - for the time being - that the Panel acted in good faith and that it only concluded upon false, faulty or wrong information that has been given to them, if such information exists.

To avoid arbitrariness it is necessary that the concrete facts and elements on which the allegation is based, are at least retrievable, quod non

At least parties mentioned should have been allowed to defend themselves with a full knowledge of the facts and minimal to be able to know some motive that would make a minimum of control or contradiction possible, quod non

I presume every reasonable man should agree that arbitrariness is unacceptable.

From a normal cautious and careful person it can be expected that he seeks the truth by controlling his facts as much as possible and that he refrains from spreading rumors that could damage a party if he is not able to show the truthfulness of such rumors

20.

Declaring in public without being able to provide any proof or fact that parties mentioned would be involved in illegal or unethical activities would constitutes a crime of slander and

defamation according to standards of many legislation, not only Belgian law.

Parties mentioned could accept that the original goal of the Panel is a noble goal that deserves all means and attention but on the other side this does not mean that all elementary principles of law can be put aside and companies or persons can be branded based only on mere malicious rumors and allegations.

In such case we honestly speak of a witch-hunt, were arbitrariness rules and everyone that is pointed at is declared an outlaw without any further defense.

The term witch hunt is not farfetched if there is no control on the investigation, if there is an absolute immunity for the prosecutors, a complete anonymity regarding alleged sources of information, no necessity to present evidence, no possibility of contradiction, no possibility to defend or reply and in the end the accused is asked to accept what is to him only a pattern of slander and defamation.

The Panel should not be allowed to hide behind the so-called safety of it sources and therefore being capable of providing no evidence whatsoever and to consider itself unbound by any due process of law.

When in the medieval age the Inquisition wanted to protect a witness who was ready to testify that he/she had seen a suspect communicating with the devil the witness was allowed to appear in court with a mask, or hood, over the face. This was how the court heard the "truth", and the witness was

protected from the evil eye of the witch who might take revenge after being burned at the stake.

What can not be allowed, if we do not want to turn back the clock 500 years, under any circumstances is the permanent concealment of the identity of so-called witnesses, neither the refusal to present any document or the content of any declaration whatsoever and this on "grounds of confidentiality"

One can ask what kind of witness would exist that can give the Panel confidential information and then can refuse to answer further questions as to how such information was obtained or even the accused to verify the content of a declaration.

Going on the statements of the Panel itself as a rule this could be an undercover agent, who have been necessarily operating illegally in foreign countries in order to collect information that cannot be obtained by regular means.

It is clear that such "*evidence*" can not be excepted as valid and such clandestine witnesses can not be believed at all, more over where it is not even certain that the Panel is basing itself only on information received from undercover agents but could also exclusively be receiving very dubious information from competitors of parties concerned or any other party with an interest to damage parties concerned.

The court in Antwerp, which can be quoted as follows, gave a relevant judgment:

> *"By the public prosecutor no further information is given, nor is there a document rendered regarding the fact. In a former cession already a postponement was given in order to obtain permission from the State's Security Services to deliver documents in order to be able to judge the related, serious facts. For one reason or another no documents are rendered.*
> ***It is unacceptable that certain facts are quoted by the State's Security Services without producing any document of whatsoever to substantiate this allegation and without any right of the concerned person to defend himself.***
> ***Such an attitude witnesses an unacceptable disapproval for the rights of defense. As much unacceptable is the fact that the court would be expected to judge a person without the judge even being able to render any control or to be able to judge a fact that is quoted against the concerned person..."*** (See Rb. Eerste Aanleg Antwerp, 12 February 2001, ongepubl., Seber / OM).

It is of course unacceptable that any Panel would be able to give unfounded allegations from a position of complete anonymity and immunity towards companies and persons and that these accused companies or persons should be sanctioned or even threatened in their existence, without any appropriate right of defense, especially if this is done under the name of the United Nations.

21.

The company SIERRA GEM assigned an external audit firm, CVBA VAN GEETH, DERICK & C°, with offices Jan Welterslaan 13 at 2100 Antwerp to report on the import of all her rough and polished diamonds over the period January 2001 till September 2002.

The auditors made an independent review of all activities of the company and came to the following conclusions:

> *"Based on our review of the books and records of the Public Limited Company Sierra Gem Diamonds Company, with its social seat in 2018 Antwerp (Belgium), Hovenierstraat 30 b 243 (TR Antwerp 225.591) we hereby confirm that for every purchase in the period January 1st 2000 till September 30th 2002 all legal regulations are followed and that there is no prove of any illegal or illegitimated behavior which was insinuated in the report of the "Panel of Experts" concerning the Democratic Republic Congo of 8 October 2002 (Rapport nr. 5/2002/1146)."*

22.

Parties mentioned were ready to be confronted with each document, declaration or any other information that would have given rise to the mentioning of their name and the incorrect accusations coupled hereto and from which confrontation it would have been crystal clear that the requestors have been wrongly accused.

In breach with Resolution 1457 (2003) of the Security Council the Panel of Experts refused to provide any documentation and /or information as it was ordered to by the Security Council

to do before 31 March 2003 and did not comply with it, not to the letter and certainly not to the spirit of the Resolution.

The only conclusion can be that the name of parties concerned should be cleared and explicit correction should be published.

Yours Sincerely,
For the requestors, their Attorney at law,

Mr. M. De Block
Antwerp, 27th of May 2003

Reaction No. 43

From the desk of Mr. Marc De Block
Attorney at law
Antwerp - Belgium

FINAL ATTACHMENT TO REPORT PANEL OF EXPERTS ON DRC

On behalf of TRIPLE A DIAMONDS NV

To the attention of
SECURITY COUNCIL UNITED NATIONS
PANEL OF EXPERTS
UNITED NATIONS
EXPNATDRC/UNON

REF: Resolution 1457/2003

AT THE REQUEST OF:

1. **Mr. Ahmad ALI AHMAD**, with chosen domicile at the office of his counsel and

2. a company according to Belgian law, the company **NV TRIPLE A DIAMONDS**, with registered office at Schupstraat 20, 2018 Antwerp

(Hereinafter called "*parties mentioned*")

Represented by Mr. Marc De Block, attorney at law in Belgium, having his office Vlaamse Kaai 54-57 at 2000 Antwerp, Belgium.

1.

The Panel of Experts on the Illegal Exploitation of Natural Resources and other Forms of Wealth in the Democratic Republic of the Congo was appointed on request of the Security Council dated **2 June 2000** (S/REST/2000/20)

The original mandate of the Panel was:

- to follow up on reports and collect information on all activities of illegal exploitation of natural resources and other forms of wealth of the Democratic Republic of the Congo, including the violation of the sovereignty of that country;
- to research and analyze the links between the exploitation of the natural resources and other forms of wealth in the Democratic Republic of the Congo and the continuation of the conflict;
- to revert to the Council with recommendations. (S/2001/357, p. 3)

A first report was published the **12th of April 2001** (S/2001/357).

The Panel's mandate was extended until the **30th November 2001** (S/2001/951).

A second report was published the **13th November** 2001 (S/2001/1072).

A third report was published the **16th October 2002** (S/2002/1146).

The Security Council took a new resolution on the **24th January 2003** (Resolution 1457/S/RES/1457/2003)

Following the text of Resolution 1457 (2003) of the Security Council dd. 24/01/2003, the Panel of Experts was explicitly requested "***to provide parties concerned, all information and documentation, connecting them to the illegal exploitation of the Democratic Republic of the Congo's natural resources and/or as being in contravention with OECD-guidelines".***

A first deadline was set before the **31st of March 2003**, whereas the Panel would then have to publish our reactions as an attachment to their report, no later than 15th of April 2003.

Arguments however had to be deposited without having received any information and/or documentation from the Panel before the 31st of March.

Just before expiration of the deadline of 30th of March 2003 the Panel of Experts asked and obtained (for itself) an extension from the Security Council to provide such information / documentation, this time before the end of May 2003.

Following this Resolution 1457 – the defense notes on behalf of parties concerned, were already sent **on 24th of March with request to publish these before 15 April 2003 as annex to the Report in accordance with Resolution 1457.**

In view of the fact that we didn't receive any information and / or documentation - and this despite numerous requests - from the Panel - and this in breach with the resolution - the defense remained limited.

As from the same day, the **24 March 2003** a Note was published on the Internet by the President of the Security Council stating:

> "Following consultations among the members of the Security Council, they have decided, in order to give more time to the individuals, companies and States wishing to send to the Secretariat their reactions to the findings of the last report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo (S/2002/1146), to extend the deadlines set out in paragraph 11 of Security Council resolution 1457 (2003) of 24 January 2003. Those individuals, companies and States named in the Panel's last report are invited to send their reactions to the Secretariat no later than 31 May 2003, in order for these reactions to be published no later than 20 June 2003."

The Panel **did not attempt to visit or hear people and companies they named and shamed in their reports and this since 2nd June 2000 or being a period of almost three years…** !

According to the Decisions of the Court of Human Rights (Hof Mensenrechten) (3e afd.) nr. 29731/96, 13 February 2001 (Krombach / Frankrijk), the right of everyone charged to be effectively defended and represented by a lawyer, assigned officially if need be, is fundamental and according to Articles 6 §§ 1 and 3 (c) of the Convention on Human Rights

has the right to defend himself in person or… **through legal assistance of his own choosing.**

Invitations by the Panel to finally come to Nairobi, Kenya was first sent 9th April 2003 and this to come to Nairobi between 14 and 30 April 2003!

The Panel had to know - and was even informed explicitly - that many or most diamond offices in Belgium were closed for the Easter Holidays in this exact period and would not reopen until 28 of April 2003.

10 to 12 people had to stop all their normal activities and had to rush to Nairobi from all over the world on request of the Panel and this in such a period, on such short notice after the Panel had three years to invite, hear and or see anyone, anywhere they liked.

Translators, they were told, they could find for themselves and it was mentioned that also "*lawyers were welcome*".

The Panel stated further:

> ***"The degree of cooperation already developed between…and the Panel suggests that this meeting could produce positive outcomes, including arriving quickly at a mutually satisfactory solution to this matter…"***

Stating that " *information* " could only be handed over for review in face-to-face meetings made such proceedings a charade. Under such pretext no reasonable control or contradiction of information was reasonably possible and it entitled the Panel to show whatever they wanted and to give any explanation they want in a report afterwards on what they so-called presented as information.

My clients did not want to be made part of such kind of simulation, as it appeared only intended to give the Panel a formal opportunity to write in a final Report that all people and companies were invited, seen and heard and confronted with " evidence" in face to face meetings, while in reality no such real possibility of verification, contradiction and/or marginal control on any information was rendered.

Representation by an attorney or any other means of communication were rejected and this despite efforts from the Belgian Ministry of Economic Affairs to send information / documentation through their diplomatic services.

The Panel stated on forehand that no documentation or information would be given to anyone unless they personally came to Kenya. The Panel would not grant any meetings with legal representation unless one or more of his clients in person accompanied the attorney.

All parties concerned were obliged to travel in person to Nairobi as from the 23rd of April 2003.

Very limited appointments were granted and to each party was given approximately 5 to 10 minutes time, although the Panel alleges it speed "*5 hours*" in total on 9 different parties…

Relevant is that no explanation whatsoever was given by the Panel and the Panel handed over its so-called "*evidence*".

What the Panel called "*evidence*" could be regarded as completely ridiculous if the case was not so tragic.

Each party was given **one** (1) page, typed by the Panel of Experts itself and only containing a **summary** of the accusations itself.

So the Panel wants to present as evidence a summary made by itself of the accusations it made.

Parties concerned were asked to sign this document after which they could receive a copy.

If they refused to sign, they could not get a copy.

It is clear that until today the Panel of Experts has not respected the resolutions of the Security Council and has not provided any information and/of documentation as it was requested to do by the Security Council.

The composition of the Panel was changed during the reports and different people and companies were named and shamed in the different reports.

2.

All reports of the Panel of Experts were immediately published on the Internet and therefore considered to be authoritative and trustworthy, although the United Nations itself had no control over the content of such reports.

Banks in Belgium closed accounts, the R.C. President Kabila fired several government officials implicated by a Panel and

third parties like the Beers asked clients not to deal with companies accused in the report of the Panel of Experts.

The result for people and companies mentioned was devastating.

The Panel of Experts never published or rendered any evidence or even information on which it based its findings and this despite numerous requests by parties mentioned in the report, by governments, national prosecutors and even a Senate Committee.

Only at the very last moment a document was created and given and this only to enable the Panel to say that "*documentation*" was given, quod non.

The Panel of Experts never gave any information about general guidelines it would have is used for making such reports or required standards of proof it utilized.

The practice of "*naming and shaming*" is unworthy for the United Nations and did not even follow elementary guidelines or general principles of law or ethics.

The Panel of Experts never even set out any ethical guidelines it might have used or created any mechanism of communication to consult with member states, other organizations or parties mentioned in their reports.

The Panel did not attempt to visit or hear people and companies they named and shamed in their reports and many

parties rightfully expressed their outrage that the Panel of Experts:

* failed to contact parties mentioned or even to ask for their comments and
* never publicized any shred of evidence leading to their conclusions or made such evidence available to parties concerned, or at least to member states and their judicial authorities.

These comments still stand today.

It should be clear to any reasonable man that grave allegations should be backed by high evidentiary standards, quod non.

The Panel of Experts did not use such standards.

There was not even a procedure that allowed people or companies that had been accused to even know what kind of evidence was used where the Panel of Experts just preferred to publicly tarnish and destroy the reputation of a great number of companies and people.

As it was mentioned from the outset by the Panel itself, the principle of naming and shaming was "*high on their priority list*" and this without <u>any</u> explanation, <u>any</u> reasonable standard or <u>any</u> right of defense.

The danger of accusations made without a due process are clear and such accusations not only damage the people and companies involved, but also undermine the credibility of the United Nations past, present and future panels.

The company of Belgian Law, TRIPLE A.DIAMONDS NV, whereof Mr. AHMAD ALI AHMAD is managing director, has as its most important activity the trade, the import and the export of rough diamonds.

Both Mr. AHMAD ALI AHMAD in person, as well as the company TRIPLE A.DIAMONDS NV have had until today an irreproachable reputation in the diamond trade and this for many years.

The reputation of Mr. AHMAD ALI AHMAD and the company TRIPLE A.DIAMONDS NV has been seriously damaged by the following passage in the report of the Panel of Experts on the Illegal Exploitation of Natural Resources and other forms of Wealth of the Democratic Republic of the Congo dd. 8 OCTOBER 2002 (S/2002/1146).

I quote:

" Some businesses associated with the " clans " are… TRIPLE A DIAMONDS… "(See report § 34, page 9)

As well as:

*The three " clans " **Ahmad**, Nassour and Khanafer - are distinct criminal organizations that operate internationally… "*
(See report § 34 page 9)

In contradiction to what is stated or suggested in this report my clients and the company emphasize not to be conflict diamond dealers, a fortiori not members of *"clans "* or associated with such clans, criminal organizations or criminal activities…

The names of AHMAD and TRIPLE A.DIAMONDS NV are used in one and the same paragraph, so Mr. AHMAD ALI AHMAD must presume to be pointed at in your report, although the reference is vague and the name AHMAD is a very common.

TRIPLE A.DIAMONDS NV is a company that created and creates work in a favorable environment where it is established.

The name AHMAD was mentioned in general and the allusion was created that anyone named AHMAD, being of Lebanese nationality, and involved in diamond business is a criminal, a conflict diamond dealer and part of a criminal organization.

The Panel uses the word " *clans* " between brackets and then ties to it the name AHMAD, saying no less that anyone carrying such name must belong to a family circle that must be regarded as being a criminal organization. Suddenly carrying a name or being a relative is in itself sufficient to be branded as a criminal of the worst kind.

Not the smallest distinction or specification is made although the name AHMAD is the most common name in eastern countries practically as " *Jones* " or " *Smith* " would be in the United States. It is unbelievable that everyone with the name AHMAD can be so easily tarnished as being part of a " *clan* " and where at least - should any evidence exist - the Panel should have pointed out which individuals they accused instead of accusing a whole family tree or a family name…

Considering the world-wide publicity that has been given to the report these unfounded accusations are of nature as to stigmatize Mr. AHMAD ALI AHMAD and the company NV TRIPLE

A.DIAMONDS NV in the very small world of the diamond sector and irreparable harm has already been done.

Also after Resolution 1457 the Panel never gave any explanation on why and how OECD-guidelines would have been broken by TRIPLE A DIAMONDS.

3.

The practice of "*naming and shaming*" as the Panel of Experts used it contravenes to the following articles in the Universal Declaration of Human Rights:

PREAMBLE

> ***Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,***
>
> ***Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,***
>
> ***Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,***
>
> *Whereas it is essential to promote the development of friendly relations between nations,*
>
> *Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined*

to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

...

Article 2.

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

....

Article 6.

Everyone has the right to recognition everywhere as a person before the law.

Article 7.

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination

in violation of this Declaration and against any incitement to such discrimination.

Article 10.

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11.

(1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense.
(2) No one shall be held guilty of any penal offence on account of any act or omission, which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12.

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks.

The refusal to give any opportunity to be heard on forehand and to give any defense afterwards or to be provided with any documentation and/or information is a flagrant violation of the above articles of the Universal Declaration of Human Rights.

It is also in violation of similar articles in the Pact of New York and the European Treaty on Human Rights.

4.

Immediately upon publication of the report, the Panel of Experts was requested <u>numerous</u> times to give even the smallest opportunity to present a defense.

The legal counsel requested an opportunity at any given place, time and date to present a defense and to be provided with any documents and / or information on the following occasions:

* fax messages 28 October 2002 (6)
* fax messages 6 November 2002, fax to United Nations 7 November 2002, fax to United Nations 13 November 2002 (3)
* E-mail 21 November 2002, e-mail 25 November 2002, visit New York 18 November 2002, e-mail 3 December 2002, e-mail 10 December 2002

Parties mentioned <u>never</u> received any documentation and / or information or any reasonable opportunity to present their defense before the Panel of Experts.

Only at the last moment the Panel mad a futile attempt to enable itself tot state that "*the letter*" of Resolution 1457 would have been respected, quod non (see supra).

5.

Resolution 1457 (2003) stated clearly:

> *"9. Stresses that the new mandate of the Panel should include:*
>
> - *Further review of relevant data and analysis of information previously gathered by the Panel, as well as any new information, including specifically material, provided by individuals and entities named in the previous reports of the Panel, in order to verify, reinforce and, where necessary, update the Panel's findings,* ***and/or CLEAR parties named in the Panel's previous reports, with a view to adjusting accordingly the lists attached to these reports;***
>
> *11. Invites, in the interests of transparency, individuals, companies and States, which have been named in the Panel's last report to send their reactions, with due regard to commercial confidentiality, to the Secretariat,* ***no later than 31 March 2003****, and requests the Secretary-General to arrange for the publication of these reactions, upon request by individuals, companies and States in the report of 15 October 2002, as an attachment to this report,* ***no later than 15 April 2003;***
>
> *12. Stresses the importance of dialogue between the Panel, individuals, companies and States and* ***requests in this regard that the Panel provide to the individuals, companies and States names, upon request, all information and documentation connecting them to the illegal exploitation of the Democratic Republic of the Congo's natural resources****, and requests the Panel to establish a procedure to provide the Member States, upon request, information previously collected by the Panel to help*

them take the necessary investigative action, subject to the Panel's duty to preserve the safety of its sources, and in accordance with United Nations established practice in consultation with the United Nations Office of Legal Affairs."

Following this resolution of the Security Council parties **(again)** asked the United Nations and especially the Panel of Experts to be provided with such documentation and / or information in order to be able to present such defense before the deadline of the 31st of March 2003 and in respect of Resolution 1457 (2003) and this was refused.

Not-limited, the following fax messages and e-mails were send by legal counsel to request such documentation and / or information: fax messages 29 January 2003 (3), e-mail 29 January 2003 (6), e-mail 6 February 2003 (4), e-mail 26 February 2003, e-mail 10 March 2003, e-mail 26 February 2003, e-mail 10 March 2003, fax messages 10 March 2003 (3), e-mail 11 March 2003 (3), e-mail 14 March 2003, fax message 17 March 2003, e-mail 17 March 2003 (2).

Legal counsel of client visited New York to meet with one Panel member, Mr. Bruno Chiemsky on the 19 March 2003, but was further denied any documentation or information at this occasion.

The Panel of Experts did not respect the Resolution of the Security Council 1457 (2003), namely to respect the deadline to provide documentation and / or information regarding parties mentioned in the Report and this before the 31st of March 2003 so consequently parties mentioned had nothing to defend themselves on at this time.

Parties mentioned did respect Resolution 1457 (2003).

It is clear that the Panel of Experts also did not respect Resolution 1457 after the extension it obtained from the Security Council.

There is a difference between providing real information and documentation or just pretending to give such information and documentation where in reality the Panel was only interested in being able to **formally** allege that they respected the Resolution 1457, quod non.

Giving a "*summary*" of allegations is not giving any information and/or documentation at all.

6.

Parties have even presented themselves before the Public Prosecutors in Belgium and this strictly on their own initiative in order to ask the Public Prosecutor to start an investigation in order to clear their names. An unorthodox request to be provided with justice.

The Panel of Experts never provided any documentation and / or information to such judicial authority in Belgium or any other country.

Parties are not only confronted with a despicable method of "*naming and shaming*" but were even refused to verify any information and / or documentation and thus to be informed promptly of the causes of the accusations made against them and a fortiori to have any adequate time or facilities for the preparation of any accurate reply.

I further refer to article 8, 10 and 11 of the Universal Declaration of Human Rights and especially article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms:

> *"Article 6 - Right to a fair trial*
> *1. In the determination of his civil rights and obligations or any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the*

interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

a. ***to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;***
b. ***to have adequate time and facilities for the preparation of his defence;***
c. *to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;*
d. *to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;*
e. *to have the free assistance of an interpreter if he can not understand or speak the language used in court."*

The Panel of Experts put all such elementary rights aside. (Cfr. Infra)

7.

The United Nations has only asked the Panel of Experts - and given a mandate to the Panel of Experts - to evaluate possible actions to be taken by the Security Council and to advise the Security Council on recommendations to be made to the international community, meaning countries, in order to ensure the evolution of the peace process in the Democratic Republic of the Congo.

The Panel never received a mandate to attack private business people and / or companies.

The Panel of Experts also never even had the possibility to compel testimony or documents and never had any judicial authority whatsoever and recognised this explicitly.

This means that the Panel of Experts at most received some dubious information on a strictly voluntary basis and did not have any means to verify whatsoever with regard to such information that was given to them.

8.

Such judicial authority was given to the Belgian Senate's commission "*Great Lakes*", which in Belgium obtained similar authorities as a Judge of Instruction to perform an investigation.

Following the 3 reports of the Panel of Experts, this Belgian Investigating Commission of the Senate conducted an investigation and published its findings with a report on the 20th February 2003.

Parties were summoned and appeared before this Senate's Commission a.o. to give a declaration under oath.

After investigation, the Senate's Commission concluded the following:

> *"The Commission has noted that several companies and / or persons, mentioned in the UN-report, have not been heard on forehand, which jeopardizes their rights of defence.*
>
> *Moreover the work of the Commission was made more difficult in view of the fact that she was not provided with any evidence and / or indications that should support the allegations in the UN-reports."* (Free translation, report Senate Commission dd. 20 February 2003, p. 2 § 1)

Also:

> *"From the beginning of her activities, the Commission had been confronted with the lack of legal, sufficient and workable definitions in the UN-reports of the concepts "legal and illegal" and "plundering"."* (See report Belgian Senate's Commission dd. 20 February 2003, p. 7 § 5.1)

Also:

> *"Economic activities or trade with companies or persons in each of the territories in the DRC can in itself not be considered illegal."* (See report Senate's Commission dd. 20 February 2003, p. 7 § 5.3)

"The Commission asks the Government to insist with the United Nations to come to a more clear description of the concepts legal and illegal and of plundering of natural resources and this in view of further activities of the United Nations Panel." (See report Senate's Commission, p. 7 § 5.9)

And:

"The Commission has noted that the United Nations only issued embargos against countries like Angola, Sierra Leone and Liberia, and therefore trade with other countries and even conflict areas must be considered as legal." (See report Senate's Commission, p. 19 § 3.1.6.)

And:

"With regard to the allegations formulated by the UN Panel against a number of diamond companies that OECD-guidelines would not have been respected, the Commission states that (not withstanding the fact that only concerns guidelines that are not enforceable) such guidelines are not even applicable for the diamond companies concerned because they can not be considered as multinationals. Above that, the Commission is of the opinion that the UN Panel must clarify which aspects of guidelines would not have been respected." (See report Senate's Commission, p. 22 § 3.2.1)

And in conclusion:

"In this context and based on the available information, the Commission has to conclude that with regard to the

> *concerned diamond companies no legal, incriminating elements can be found and that these diamond companies have acted in good faith."* (See report Belgian Senate's Commission, p. 23)

The Belgian Senate's Commission also noted that the Panel of Experts was clearly not infallible, since the Panel of Experts already needed to clear names of companies they named and shamed without hesitation before:

> *"The Commission, based on available information, joins the consideration mentioned in the second UN-report where it is stated that the company (Arslanian Frères) was mentioned unjustly in the first report and therefore has cleared this company."* (See report Belgian Senate's Commission, p. 26, § 3.2.5.)

9.

Parties mentioned have as their most important activity the trade and / or the import and the export of diamonds.

They have had until the publication of the Report an irreproachable reputation in the diamond trade and this for many years.

The diamond trade in Antwerp is concentrated on a relatively small surface, being in practice 2 streets (Hoveniersstraat and Schupstraat) where all well-established companies that do business in diamonds are situated. It is a matter of common knowledge as well as an economic fact that the diamond trade in Antwerp (or elsewhere) fundamentally relies on confidence and *"hear-say"*.

A good reputation in the diamond trade is essential, even vital, for every diamond dealer or every company that does business in diamonds.

The reputation of parties mentioned has been irrevocably damaged by the Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and other forms of Wealth of the Democratic Republic of the Congo dd. 8 OCTOBER 2002 (S/2002/1146).

10.

In contradiction to what is stated or suggested in this report parties mentioned emphasize not to be conflict diamond dealers, or to be members of *"clans "* or associated with such clans, criminal organizations or criminal activities or to have done any illegal or unethical activity.

Every appearance of their name in the media with regard to the report - even while defending their name - only results in more unnecessary publicity and additional damage to the reputation.

Several international newspapers and other news channels have picked up the name of parties mentioned in respect to the report and negative publicity is unavoidable and beyond repair.

Banks have revoked and/or threatened to withdraw credit lines and major clients suspended all further transactions, afraid to be connected to someone so strongly accused by the United Nations where in fact the Panel is not the United Nations.

11.

It is a basis principle in any democratic state that persons who are accused have minimum rights to defend themselves.

In the report of the Panel of Experts, made public on the Internet, people and companies were named and accused without being heard and even without any reasonable possibility to reply.

For the record it can be noted, as general rules, that:

a) Parties mentioned have a respected business and do not deal in conflict diamonds or conduct any illegal or illegitimate activities;

b) Parties mentioned were not allowed to defend themselves with a full knowledge of the facts and minimal to be able to know some motive or fact that would make a minimum of control possible, quod non;

c) To avoid arbitrariness it is necessary that some concrete facts and elements, on which the allegations would be based, are at least retrievable, quod non;

d) Declaring without any proof or fact that parties mentioned would be conflict diamond dealers and or criminals or have done something illegal or unethical should be considered as an act of slander and defamation.

Parties mentioned refute categorically the baseless accusations and inform that:

a) They never received dialogue or information and/of documentation from the Panel of Experts.
b) Have never been heard or invited by the Prosecutor in Belgium, any police organization or any other authority
c) Have never been involved in any criminal or illegal activity
d) Have a legitimate business operation asserted by documents from the High Council and the Diamond Office in Antwerp, checked for the origin by the customs authorities and forwarded to the HRD Diamond Office Antwerp (Diamond High Council).
e) Are situated in the heart of Antwerp working closely with the most respectable representatives in the Diamond business

12.

It is unlikely that when a person or company stands accused by a Panel Report, a democratic Government would give support unless it is sure of your correctness whereas all imports from diamonds are legal and a full audit can be provided.

The definition of a conflict diamond itself could be rendered meaningless. According to the World Diamond Council a "conflict diamond" is a diamond imported in violation of law or resolutions of the United Nations, intended to end trade in diamonds extracted from "Conflict Regions". Obviously, having imported diamonds legally into Belgium and in accordance with

UN resolutions makes a diamond not a conflict diamond according to the World Diamond Council or any other standard.

It should also be clear that parties mentioned are fully committed to the UN's position relating to conflict diamonds.

13.

Parties mentioned defend themselves with the firmness and the certitude of being wrongly accused.

It needs no argument that an enormous injustice is committed and it is a shame when, in the name of the United Nations, persons and companies are branded worldwide on the internet, merely based on rumors, false information or hearsay, without any further interest in the accuracy of the information that is spread or the severe consequences for the people involved.

In such case arbitrariness rules and everyone that is pointed at is declared an outlaw without any further defense.

Parties mentioned are well aware that representatives of Member States to principal and subsidiary organs of the United Nations enjoy immunity from legal process in respect of words spoken or written and all acts done in capacity as such a representative. Parties mentioned are also aware that, moreover, the United Nations also enjoys immunity from every form of legal process. That having been said, parties mentioned only requested the opportunity to present their defense, to have their arguments verified and to be confronted directly with any information that would be held against them and this was simply denied in breach with Resolution 1457 (2002) that ordered the Panel to do so.

14.

In the report of the Panel of Experts it is nowhere stated which *"evidence"* would allow to utter accusations against parties mentioned.

At most one is rendering a self-account, where one should accept that only information would have been used that has been confirmed by more than one source?

The Panel calls a summary of the allegations "evidence"…?

This way nothing more than *"belief"* is requested for the used working-method, without the necessary effort to show what *"reliable"* information would be at hand and what verifiable criteria would have been used.

It is also to easy to us the term *" known to intelligence services and police organizations "*
(See report § 34 page 9)

Of which services and organizations is the Panel talking about?

Parties mentioned have been living and working in Belgium for years at the same address in Antwerp, together with their family.

Parties mentioned have a clean criminal record, have never been accused of anything illegal by the authorities and have never been invited to give any declaration or even answer any question by such authorities.

15.

There is a clear contradiction in the report.

If the information would be correct - which it is not - there would at least have been a disturbance in some way by Belgian or other authorities and at least someone would have been interrogated, accused or under investigation (if not arrested), quod non.

If the investigation of such criminal activities however, were to be held so secretive that they are only known to " intelligence services " it would be incredible to publish such secret information worldwide on the Internet in a report that is read by millions of people.

Parties mentioned can only base themselves on the certainty that they have not infringed any embargo or law and that they did not, neither directly, nor indirectly, nor in person, nor as a middleman, nor by means of companies or third parties, not in any other way of form dealt in so-called conflict diamonds or have been associated with any criminal or unethical activity.

A legal adage states *"negativa non sunt probanda"*, which means that negative facts cannot be proven.

The above-mentioned adage is based on the idea that it is practically impossible to give evidence of a negative fact.

How can someone (or a company) proof that he (it) did <u>not</u> do something during a well-defined period of time?

The only possibility that is available is to proof an opposite positive fact or a series of positive facts that can exclude the negative fact.

If parties mentioned would have been contacted before the publication of the report on the Internet, damage could have been avoided and parties mentioned would have been able to show on forehand that the information the Panel obtained was clearly false.

The Panel was invited on numerous occasions to provide a copy of one record of proof against parties mentioned, that cannot exist for the simple reason that parties mentioned did not do what they are accused of.

Providing a summary of allegations, made up by the Panel itself, and handing over one additional document, an official import license for one shipment, is no evident whatsoever.

This meets only the letter of the Resolution 1457, not the spirit!

16.

Parties mentioned have to suppose - for the time being - that the Panel should have received some information that has led to the mentioning of their names in the report.

Parties mentioned have to accept - for the time being - that wrong and false information has been provided, by which the Panel could have been misled and bad intent cannot be excluded where such negative publicity favors some competitors.

Parties mentioned however are left in the dark and did not receive any information and/documentation and/or explanation from the Panel.

It is in the interest of the Panel to test the truthfulness and the reliability of the information received together with the requestors and based upon the data they provide.

On at least two occasions a Panel of Experts made wrong accusations in a report and a correction had to be made after presentation of the defense:

17.

In the first report, published on the Internet, of this Panel of Experts regarding the Democratic Republic of Congo dd. 12 April 2001 (S/2001/357) a firm ARSLANIAN FRERES NV was heavily accused as follows:

"*ARSLANIAN, **the conflict diamond dealers** in the Eastern Democratic Republic of the Congo, provided on average 2.000.000$ per year, each directly to the Congo desk …*"
(See Report Panel of experts van 12 April 2001, p.29, and nr. 127)

After ARSLANIAN FRERES NV defended itself on these accusations the name was completely removed from the final report and, on the contrary, in annex IV of the report the Panel of Experts expresses its **deep appreciation and gratitude** towards ARSLANIAN FRERES for having assisted the Panel of Experts in making the report (see annex IV report S/2002/1146)

ARSLANIAN FRERES was wrongfully accused and a correction was made, much to the honor of the Panel of Experts.

18.

The same happened with a firm called MACKIE DIAMONDS in Antwerp.

In the original report of the Panel of Experts regarding Angola it was stated:

"76. Azet Mohammed, who holds a British protected citizen passport, was arrested in March 2001. He was arrested for possession of a parcel of diamonds worth $100,000. Mohammed was described as the "lieutenant" of diamond dealer Ali Mackie Fouad Abess, of Mackie Diamonds in Antwerp, a Lebanese diamond dealer who was also a dealer in Sierra Leonean diamonds. Mackie, who holds a United States passport, began working in Angola in late 1999. He was deported from Angola for possession of false papers when Mohammed was arrested. Mackie's activities in Angola are under investigation."
(See letter Chairman Mr. Richard Ryan, Security Council Committee dd. 16.04.2001, p.20, nr. 76)

Also these accusations were proven completely false and - after presentation of the defense - were corrected in a following report.:

"Correction

221.Contrary to the information contained in paragraph 76 of the Mechanism's previous report (S/2001/363), there is no person know as Ali Mackie Fouad Abess. Mr. Ali Mackie, who has never been known by name or nickname as Fouad Abess, does not have any relationship with Mohammed Azet. Mr. Ali Mackie, a Belgian citizen of Lebanese origin, is the owner and director of Mackie Diamonds in Antwerp. He does not possess a United

States passport. He was neither arrested in, nor deported from, Angola. While Mr. Mackie had business interests in Angola prior to 2000, the Angolan authorities have not reported any investigation into his activities in Angola."
(See UN report on Angola S/2001/966 dd. 12 October 2001, p.43, par. 221)

At least these two clear examples prove that there certainly is a possibility that wrongful accusations were uttered and corrections are necessary.

19.

In spite of the damage that was done parties mentioned wanted to accept - for the time being - that the Panel acted in good faith and that it only concluded upon false, faulty or wrong information that has been given to them, if such information exists.

To avoid arbitrariness it is necessary that the concrete facts and elements on which the allegation is based, are at least retrievable, quod non

At least parties mentioned should have been allowed to defend themselves with a full knowledge of the facts and minimal to be able to know some motive that would make a minimum of control or contradiction possible, quod non

I presume every reasonable man should agree that arbitrariness is unacceptable.

From a normal cautious and careful person it can be expected that he seeks the truth by controlling his facts as much as possible and that he refrains from spreading rumors that could damage a party if he is not able to show the truthfulness of such rumors

20.

Declaring in public without being able to provide any proof or fact that parties mentioned would be involved in illegal or unethical activities would constitutes a crime of slander and defamation according to standards of many legislation, not only Belgian law.

Parties mentioned could accept that the original goal of the Panel is a noble goal that deserves all means and attention but on the other side this does not mean that all elementary principles of law can be put aside and companies or persons can be branded based only on mere malicious rumors and allegations.

In such case we honestly speak of a witch-hunt, were arbitrariness rules and everyone that is pointed at is declared an outlaw without any further defense.

The term witch hunt is not farfetched if there is no control on the investigation, if there is an absolute immunity for the prosecutors, a complete anonymity regarding alleged sources of information, no necessity to present evidence, no possibility of contradiction, no possibility to defend or reply and in the end the accused is asked to accept what is to him only a pattern of slander and defamation.

The Panel should not be allowed to hide behind the so-called safety of it sources and therefore being capable of providing no evidence whatsoever and to consider itself unbound by any due process of law.

When in the medieval age the Inquisition wanted to protect a witness who was ready to testify that he/she had seen a suspect communicating with the devil the witness was allowed to appear in court with a mask, or hood, over the face. This was how the court heard the "truth", and the witness was protected from the evil eye of the witch who might take revenge after being burned at the stake.

What can not be allowed, if we do not want to turn back the clock 500 years, under any circumstances is the permanent concealment of the identity of so-called witnesses, neither the refusal to present any document or the content of any declaration whatsoever and this on "grounds of confidentiality"

One can ask what kind of witness would exist that can give the Panel confidential information and then can refuse to answer further questions as to how such information was obtained or even the accused to verify the content of a declaration.

Going on the statements of the Panel itself as a rule this could be an undercover agent, who have been necessarily operating illegally in foreign countries in order to collect information that cannot be obtained by regular means.

It is clear that such "*evidence*" can not be excepted as valid and such clandestine witnesses can not be believed at all, more over where it is not even certain that the Panel is basing itself only on information received from undercover agents but could also exclusively be receiving very dubious information from competitors of parties concerned or any other party with an interest to damage parties concerned.

The court in Antwerp, which can be quoted as follows, gave a relevant judgment:

> *"By the public prosecutor no further information is given, nor is there a document rendered regarding the fact. In a former cession already a postponement was given in order to obtain permission from the State's Security Services to deliver documents in order to be able to judge the related, serious facts. For one reason or another no documents are rendered.*
> ***It is unacceptable that certain facts are quoted by the State's Security Services without producing any document of whatsoever to substantiate this allegation and without any right of the concerned person to defend himself.***
> ***Such an attitude witnesses an unacceptable disapproval for the rights of defense. As much unacceptable is the fact that the court would be expected to judge a person without the judge even being able to render any control or to be able to judge a fact that is quoted against the concerned person…"*** (See Rb. Eerste Aanleg Antwerp, 12 February 2001, ongepubl., Seber / OM).

It is of course unacceptable that any Panel would be able to give unfounded allegations from a position of complete anonymity and immunity towards companies and persons and that these accused companies of persons should be sanctioned or even threatened in their existence, without any appropriate right of defense, especially if this is done under the name of the United Nations.

21.

The company TRIPLE A DIAMONDS assigned an external audit firm, CVBA VAN GEET, DERICK & C°, with offices Jan Welterslaan 13 at 2100 Antwerp to report on the import of all her rough and polished diamonds over the relevant period January 2001 till September 2002.

The auditors made an independent review of all activities of the company and came to the following conclusions:

> "*Based on our review of the books and records of the Public Limited Company Triple A Diamonds Company, with its social seat in 2018 Antwerp (Belgium), Schupstraat 20 bus 16 (TR Antwerp 250.206) we hereby confirm that for every purchase in the period January 1st 2000 till September 30th 2002 all legal regulations are followed and that there is no prove of any illegal or illegitimated behavior which was insinuated in the report of the "Panel of Experts" concerning the Democratic Republic Congo of 8 October 2002 (Rapport nr. 5/2002/1146).*"

These auditors have a legal obligation, according to Belgian law, to be objective and impartial.

22.

Parties mentioned were ready to be confronted with each document, declaration or any other information that would have given rise to the mentioning of their name and the incorrect accusations coupled hereto and from which confrontation it would have been crystal clear that the requestors have been wrongly accused.

In breach with Resolution 1457 (2003) of the Security Council the Panel of Experts refused to provide any documentation and /or information as it was ordered to by the Security Council to do before 31 March 2003 and did not comply with it, not to the letter and certainly not to the spirit of the Resolution.

he only conclusion can be that the name of parties concerned should be cleared and explicit correction should be published.

Yours Sincerely,
For the requestors, their Attorney at law,

Mr. M. De Block
Antwerp, 27th of May 2003

Reaction No. 44

From the desk of Mr. Marc De Block
Attorney at law
Antwerp - Belgium

FINAL ATTACHMENT TO REPORT PANEL OF EXPERTS ON DRC

On behalf of Mr. KHALIL NAZEEM IBRAHIM

To the attention of
SECURITY COUNCIL UNITED NATIONS
PANEL OF EXPERTS
UNITED NATIONS
EXPNATDRC/UNON

REF: Resolution 1457/2003
AT THE REQUEST OF:

1. **Mr. KHALIL NAZEEM IBRAHIM**, with chosen domicile at the office of his counsel and

(Hereinafter called "*parties mentioned*")

represented by Mr. Marc De Block, attorney at law in Belgium, having his office Vlaamse Kaai 54-57 at 2000 Antwerp, Belgium.

1.

The Panel of Experts on the Illegal Exploitation of Natural Resources and other Forms of Wealth in the Democratic Republic of the Congo was appointed on request of the Security Council dated **2 June 2000** (S/REST/2000/20)

The original mandate of the Panel was:

- to follow up on reports and collect information on all activities of illegal exploitation of natural resources and other forms of wealth of the Democratic Republic of the Congo, including the violation of the sovereignty of that country;
- to research and analyze the links between the exploitation of the natural resources and other forms of wealth in the Democratic Republic of the Congo and the continuation of the conflict;
- to revert to the Council with recommendations. (S/2001/357, p. 3)

A first report was published the **12th of April 2001** (S/2001/357).

The Panel's mandate was extended until the **30th November 2001** (S/2001/951).

A second report was published the **13th November 2001** (S/2001/1072).

A third report was published the **16th October 2002** (S/2002/1146).

The Security Council took a new resolution on the **24th January 2003** (Resolution 1457/S/RES/1457/2003)

Following the text of Resolution 1457 (2003) of the Security Council dd. 24/01/2003, the Panel of Experts was explicitly requested "***to provide parties concerned, all information and***

documentation, connecting them to the illegal exploitation of the Democratic Republic of the Congo's natural resources and/or as being in contravention with OECD-guidelines".

A first deadline was set before the **31st of March 2003**, whereas the Panel would then have to publish our reactions as an attachment to their report, no later than 15th of April 2003.

Arguments however had to be deposited without having received any information and/or documentation from the Panel before the 31st of March.

Just before expiration of the deadline of 30th of March 2003 the Panel of Experts asked and obtained (for itself) an extension from the Security Council to provide such information / documentation, this time before the end of May 2003.

Following this Resolution 1457 - the defense notes on behalf of parties concerned, were already sent **on 24th of March with request to publish these before 15 April 2003 as annex to the Report in accordance with Resolution 1457.**

In view of the fact that we didn't receive any information and / or documentation - and this despite numerous requests - from the Panel - and this in breach with the resolution - the defense remained limited.

As from the same day, the **24 March 2003** a Note was published on the Internet by the President of the Security Council stating:

> "Following consultations among the members of the Security Council, they have decided, in order to give

more time to the individuals, companies and States wishing to send to the Secretariat their reactions to the findings of the last report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo (S/2002/1146), to extend the deadlines set out in paragraph 11 of Security Council resolution 1457 (2003) of 24 January 2003. Those individuals, companies and States named in the Panel's last report are invited to send their reactions to the Secretariat no later than 31 May 2003, in order for these reactions to be published no later than 20 June 2003."

The Panel **did not attempt to visit or hear people and companies they named and shamed in their reports and this since 2nd June 2000 or being a period of almost three years…!**

According to the Decisions of the Court of Human Rights (Hof Mensenrechten) (3e afd.) nr. 29731/96, 13 February 2001 (Krombach / Frankrijk), the right of everyone charged to be effectively defended and represented by a lawyer, assigned officially if need be, is fundamental and according to Articles 6 §§ 1 and 3 (c) of the Convention on Human Rights has the right to defend himself in person or… **through legal assistance of his own choosing.**

Invitations by the Panel to finally come to Nairobi, Kenya was first sent 9th April 2003 and this to come to Nairobi between 14 and 30 April 2003!

The Panel had to know - and was even informed explicitly - that many or most diamond offices in Belgium were closed for the Easter Holidays in this exact period and would not reopen until 28 of April 2003.

10 to 12 people had to stop all their normal activities and had to rush to Nairobi from all over the world on request of the Panel and this in such a period, on such short notice after the Panel had three years to invite, hear and or see anyone, anywhere they liked.

Translators, they were told, they could find for themselves and it was mentioned that also "*lawyers were welcome*".

The Panel stated further:

> ***"The degree of cooperation already developed between…and the Panel suggests that this meeting could produce positive outcomes, including arriving quickly at a mutually satisfactory solution to this matter…"***

Stating that " *information* " could only be handed over for review in face-to-face meetings made such proceedings a charade. Under such pretext no reasonable control or contradiction of information was reasonably possible and it entitled the Panel to show whatever they wanted and to give any explanation they want in a report afterwards on what they so-called presented as information.

My clients did not want to be made part of such kind of simulation, as it appeared only intended to give the Panel a formal opportunity to write in a final Report that all people and companies were invited, seen and heard and confronted with " evidence" in face to face meetings, while in reality no such real possibility of verification, contradiction and/or marginal control on any information was rendered.

Representation by an attorney or any other means of communication were rejected and this despite efforts from the Belgian Ministry of Economic Affairs to send information / documentation through their diplomatic services.

The Panel stated on forehand that no documentation or information would be given to anyone unless they personally came to Kenya. The Panel would not grant any meetings with legal representation unless one or more of his clients in person accompanied the attorney.

All parties concerned were obliged to travel in person to Nairobi as from the 23rd of April 2003.

Very limited appointments were granted and to each party was given approximately 5 to 10 minutes time, although the Panel alleges it speed "*5 hours*" in total on 9 different parties…

Relevant is that no explanation whatsoever was given by the Panel and the Panel handed over its so-called "*evidence*".

What the Panel called "*evidence*" could be regarded as completely ridiculous if the case was not so tragic.

Each party was given **one** (1) page, typed by the Panel of Experts itself and only containing a **summary** of the accusations itself.

So the Panel wants to present as evidence a summary made by itself of the accusations it made.

Parties concerned were asked to sign this document after which they could receive a copy.

If they refused to sign, they could not get a copy.

It is clear that until today the Panel of Experts has not respected the resolutions of the Security Council and has not provided any information and/of documentation as it was requested to do by the Security Council.

The composition of the Panel was changed during the reports and different people and companies were named and shamed in the different reports.

2.

All reports of the Panel of Experts were immediately published on the Internet and therefore considered to be authoritative and trustworthy, although the United Nations itself had no control over the content of such reports.

Banks in Belgium closed accounts, the R.C. President Kabila fired several government officials implicated by a Panel and third parties like the Beers asked clients not to deal with companies accused in the report of the Panel of Experts.

The result for people and companies mentioned was devastating.

The Panel of Experts never published or rendered any evidence or even information on which it based its findings and this despite numerous requests by parties mentioned in the report, by governments, national prosecutors and even a Senate Committee.

Only at the very last moment a document was created and given and this only to enable the Panel to say that "*documentation*" was given, quod non.

The Panel of Experts never gave any information about general guidelines it would have is used for making such reports or required standards of proof it utilized.

The practice of "*naming and shaming*" is unworthy for the United Nations and did not even follow elementary guidelines or general principles of law or ethics.

The Panel of Experts never even set out any ethical guidelines it might have used or created any mechanism of communication to consult with member states, other organizations or parties mentioned in their reports.

The Panel did not attempt to visit or hear people and companies they named and shamed in their reports and many parties rightfully expressed their outrage that the Panel of Experts:

* failed to contact parties mentioned or even to ask for their comments and
* never publicized any shred of evidence leading to their conclusions or made such evidence available to parties concerned, or at least to member states and their judicial authorities.

These comments still stand today.

It should be clear to any reasonable man that grave allegations should be backed by high evidentiary standards, quod non.

The Panel of Experts did not use such standards.

There was not even a procedure that allowed people or companies that had been accused to even know what kind of evidence was used where the Panel of Experts just preferred to publicly tarnish and destroy the reputation of a great number of companies and people.

As it was mentioned from the outset by the Panel itself, the principle of naming and shaming was "*high on their priority list*" and this without <u>any</u> explanation, <u>any</u> reasonable standard or <u>any</u> right of defense.

The danger of accusations made without a due process are clear and such accusations not only damage the people and companies involved, but also undermine the credibility of the United Nations past, present and future panels.

The name of KHALIL NAZEEM IBRAHIM was mentioned in the report as follows:

"*The Panel has credible evidence that KHALIL NAZEEM IBRAHIM used the capital and marketing services of HEMANG NANANAL SHAH, proprietor of NAMI GEMS in Antwerp.* " (Report S/2002/1146)

KHALIL NAZEEM IBRAHIM never did anything to that nature.

In other places of the report the Panel of Experts quotes a name of "*Mr. KHALIL*", where it is not specified that is does not concern Mr. KHALIL NAZEEM IBRAHIM but someone else.

The Panel of Experts refers to a Mr. HAMAD KHALIL. (See Report S/2002/1146 § 85).

Confusing is created by the Panel and a suggestion is made that Mr. KHALIL would be the same as Mr. KHALIL NAZEEM IBRAHIM, which clearly he is not.

Mr. KHALIL NAZEEM IBRAHIM is of Lebanese nationality, born on the 20th January 1973.

Mr. KHALIL NAZEEM IBRAHIM left Lebanon as a refugee from the Lebanese civil war in 1989 and was proprietor of a restaurant in Uganda, which was only open for a year upon which Mr. KHALIL NAZEEM IBRAHIM returned to Lebanon.

Together with his family he takes care of land in south Lebanon, namely tree plantations in accordance with a project of the United Nations UNIFIL.

The name of KHALIL NAZEEM IBRAHIM was wrongfully mentioned in the report of the Panel of Experts and the Panel of Experts did not take the effort to distinguish persons carrying such a common Lebanese name as KHALIL.

Also after Resolution 1457 the Panel never gave <u>any</u> explanation on why and how OECD-guidelines would have been broken by KHALIL NAZEEM IBRAHIM.

3.

The practice of "*naming and shaming*" as the Panel of Experts used it contravenes to the following articles in the Universal Declaration of Human Rights:

PREAMBLE

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

...

Article 2.

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it is independent, trust, non-self-governing or under any other limitation of sovereignty.

….

Article 6.

Everyone has the right to recognition everywhere as a person before the law.

Article 7.

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 10.

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11.

(1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense.

(2) No one shall be held guilty of any penal offence on account of any act or omission, which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12.

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks.

The refusal to give any opportunity to be heard on forehand and to give any defense afterwards or to be provided with any documentation and/or information is a flagrant violation of the above articles of the Universal Declaration of Human Rights.

It is also in violation of similar articles in the Pact of New York and the European Treaty on Human Rights.

4.

Immediately upon publication of the report, the Panel of Experts was requested numerous times to give even the smallest opportunity to present a defense.

The legal counsel requested an opportunity at any given place, time and date to present a defense and to be provided with any documents and / or information on the following occasions:

* fax messages 28 October 2002 (6)
* fax messages 6 November 2002, fax to United Nations 7 November 2002, fax to United Nations 13 November 2002 (3)
* E-mail 21 November 2002, e-mail 25 November 2002, visit New York 18 November 2002, e-mail 3 December 2002, e-mail 10 December 2002

Parties mentioned never received any documentation and / or information or any reasonable opportunity to present their defense before the Panel of Experts.

Only at the last moment the Panel mad a futile attempt to enable itself tot state that "*the letter*" of Resolution 1457 would have been respected, quod non (see supra).

5.

Resolution 1457 (2003) stated clearly:

> *"9. Stresses that the new mandate of the Panel should include:*
>
> - *Further review of relevant data and analysis of information previously gathered by the Panel, as well as any new information, including specifically material, provided by individuals and entities named in the previous reports of the Panel, in order to verify, reinforce and, where necessary, update the Panel's findings,* ***and/or CLEAR parties named in the Panel's previous reports, with a view to adjusting accordingly the lists attached to these reports;***

*11. Invites, in the interests of transparency, individuals, companies and States, which have been named in the Panel's last report to send their reactions, with due regard to commercial confidentiality, to the Secretariat, **no later than 31 March 2003**, and requests the Secretary-General to arrange for the publication of these reactions, upon request by individuals, companies and States in the report of 15 October 2002, as an attachment to this report, **no later than 15 April 2003**;*

*12. Stresses the importance of dialogue between the Panel, individuals, companies and States and **requests in this regard that the Panel provide to the individuals, companies and States names, upon request, all information and documentation connecting them to the illegal exploitation of the Democratic Republic of the Congo's natural resources**, and requests the Panel to establish a procedure to provide the Member States, upon request, information previously collected by the Panel to help them take the necessary investigative action, subject to the Panel's duty to preserve the safety of its sources, and in accordance with United Nations established practice in consultation with the United Nations Office of Legal Affairs."*

Following this resolution of the Security Council parties **(again)** asked the United Nations and especially the Panel of Experts to be provided with such documentation and / or information in order to be able to present such defense before the deadline of the 31st of March 2003 and in respect of Resolution 1457 (2003) and this was refused.

Not-limited, the following fax messages and e-mails were send by legal counsel to request such documentation and / or information: fax messages 29 January 2003 (3), e-mail 29 January 2003 (6), e-mail 6 February 2003 (4), e-mail 26 February 2003, e-mail 10 March 2003, e-mail 26 February 2003, e-mail 10 March 2003, fax messages 10 March 2003 (3), e-mail 11 March 2003 (3), e-mail 14 March 2003, fax message 17 March 2003, e-mail 17 March 2003 (2).

Legal counsel of client visited New York to meet with one Panel member, Mr. Bruno Chiemsky on the 19 March 2003, but was further denied any documentation or information at this occasion.

The Panel of Experts did not respect the Resolution of the Security Council 1457 (2003), namely to respect the deadline to provide documentation and / or information regarding parties mentioned in the Report and this before the 31st of March 2003 so consequently parties mentioned had nothing to defend themselves on at that time

Parties mentioned did respect Resolution 1457 (2003).

It is clear that the Panel of Experts also did not respect Resolution 1457 after the extension it obtained from the Security Council.

There is a difference between providing real information and documentation or just pretending to give such information and documentation where in reality the Panel was only interested in being able to **formally** allege that they respected the Resolution 1457, quod non.

Giving a "*summary*" of allegations is not giving any information and/or documentation at all.

6.

Parties have even presented themselves before the Public Prosecutors in Belgium and this strictly on their own initiative in order to ask the Public Prosecutor to start an investigation in order to clear their names. An unorthodox request to be provided with justice.

The Panel of Experts never provided any documentation and / or information to such judicial authority in Belgium or any other country.

Parties are not only confronted with a despicable method of "*naming and shaming*" but were even refused to verify any information and / or documentation and thus to be informed promptly of the causes of the accusations made against them and a fortiori to have any adequate time or facilities for the preparation of any accurate reply.

I further refer to article 8, 10 and 11 of the Universal Declaration of Human Rights and especially article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms:

> *"Article 6 – Right to a fair trial*
> *1. In the determination of his civil rights and obligations or any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part*

of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

a. ***to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;***
b. ***to have adequate time and facilities for the preparation of his defence;***
c. *to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;*
d. *to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;*
e. *to have the free assistance of an interpreter if he can not understand or speak the language used in court."*

The Panel of Experts put all such elementary rights aside. (Cfr. Infrap)

7.

The United Nations has only asked the Panel of Experts - and given a mandate to the Panel of Experts - to evaluate possible actions to be taken by the Security Council and to advise the Security Council on recommendations to be made to the international community, meaning countries, in order to ensure the evolution of the peace process in the Democratic Republic of the Congo.

The Panel never received a mandate to attack private business people and / or companies.

The Panel of Experts also never even had the possibility to compel testimony or documents and never had any judicial authority whatsoever and recognised this explicitly.

This means that the Panel of Experts at most received some dubious information on a strictly voluntary basis and did not have any means to verify whatsoever with regard to such information that was given to them.

8.

Such judicial authority was given to the Belgian Senate's commission "*Great Lakes*", which in Belgium obtained similar authorities as a Judge of Instruction to perform an investigation.

Following the 3 reports of the Panel of Experts, this Belgian Investigating Commission of the Senate conducted an investigation and published its findings with a report on the 20th February 2003.

Parties were summoned and appeared before this Senate's Commission a.o. to give a declaration under oath.

After investigation, the Senate's Commission concluded the following:

> *"The Commission has noted that several companies and / or persons, mentioned in the UN-report, have not been heard on forehand, which jeopardizes their rights of defence.*
>
> *Moreover the work of the Commission was made more difficult in view of the fact that she was not provided with any evidence and / or indications that should support the allegations in the UN-reports."* (Free translation, report Senate Commission dd. 20 February 2003, p. 2 § 1)

Also:

> *"From the beginning of her activities, the Commission had been confronted with the lack of legal, sufficient and workable definitions in the UN-reports of the concepts "legal and illegal" and "plundering"."* (See report Belgian Senate's Commission dd. 20 February 2003, p. 7 § 5.1)

Also:

> *"Economic activities or trade with companies or persons in each of the territories in the DRC can in itself not be considered illegal."* (See report Senate's Commission dd. 20 February 2003, p. 7 § 5.3)

"The Commission asks the Government to insist with the United Nations to come to a more clear description of the concepts legal and illegal and of plundering of natural resources and this in view of further activities of the United Nations Panel." (See report Senate's Commission, p. 7 § 5.9)

And:

"The Commission has noted that the United Nations only issued embargos against countries like Angola, Sierra Leone and Liberia, and therefore trade with other countries and even conflict areas must be considered as legal." (See report Senate's Commission, p. 19 § 3.1.6.)

And:

"With regard to the allegations formulated by the UN Panel against a number of diamond companies that OECD-guidelines would not have been respected, the Commission states that (not withstanding the fact that only concerns guidelines that are not enforceable) such guidelines are not even applicable for the diamond companies concerned because they can not be considered as multinationals. Above that, the Commission is of the opinion that the UN Panel must clarify which aspects of guidelines would not have been respected." (See report Senate's Commission, p. 22 § 3.2.1)

And in conclusion:

> *"In this context and based on the available information, the Commission has to conclude that with regard to the concerned diamond companies no legal, incriminating elements can be found and that these diamond companies have acted in good faith."* (See report Belgian Senate's Commission, p. 23)

The Belgian Senate's Commission also noted that the Panel of Experts was clearly not infallible, since the Panel of Experts already needed to clear names of companies they named and shamed without hesitation before:

> *"The Commission, based on available information, joins the consideration mentioned in the second UN-report where it is stated that the company (Arslanian Frères) was mentioned unjustly in the first report and therefore has cleared this company."* (See report Belgian Senate's Commission, p. 26, § 3.2.5.)

9.

Parties mentioned have as their most important activity the trade and / or the import and the export of diamonds.

They have had until the publication of the Report an irreproachable reputation in the diamond trade and this for many years.

The diamond trade in Antwerp is concentrated on a relatively small surface, being in practice 2 streets (Hoveniersstraat and Schupstraat) where all well-established companies that do business in diamonds are situated. It is a matter of common knowledge as well as an economic fact that the diamond trade

in Antwerp (or elsewhere) fundamentally relies on confidence and *"hear-say"*.

A good reputation in the diamond trade is essential, even vital, for every diamond dealer or every company that does business in diamonds.

The reputation of parties mentioned has been irrevocably damaged by the Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and other forms of Wealth of the Democratic Republic of the Congo dd. 8 OCTOBER 2002 (S/2002/1146).

10.

In contradiction to what is stated or suggested in this report parties mentioned emphasize not to be conflict diamond dealers, or to be members of *"clans "* or associated with such clans, criminal organizations or criminal activities or to have done any illegal or unethical activity.

Every appearance of their name in the media with regard to the report - even while defending their name - only results in more unnecessary publicity and additional damage to the reputation.

Several international newspapers and other news channels have picked up the name of parties mentioned in respect to the report and negative publicity is unavoidable and beyond repair.

Banks have revoked and/or threatened to withdraw credit lines and major clients suspended all further transactions, afraid

to be connected to someone so strongly accused by the United Nations where in fact the Panel is <u>not</u> the United Nations.

11.

It is a basis principle in any democratic state that persons who are accused have minimum rights to defend themselves.

In the report of the Panel of Experts, made public on the Internet, people and companies were named and accused without being heard and even without any reasonable possibility to reply.

For the record it can be noted, as general rules, that:

a) Parties mentioned have a respected business and do not deal in conflict diamonds or conduct any illegal or illegitimate activities;

b) Parties mentioned were not allowed to defend themselves with a full knowledge of the facts and minimal to be able to know some motive or fact that would make a minimum of control possible, quod non;

c) To avoid arbitrariness it is necessary that some concrete facts and elements, on which the allegations would be based, are at least retrievable, quod non;

d) Declaring without any proof or fact that parties mentioned would be conflict diamond dealers and or criminals or have done something illegal or unethical should be considered as an act of slander and defamation.

Parties mentioned refute categorically the baseless accusations and inform that:

a) They never received dialogue or information and/of documentation from the Panel of Experts.
b) Have never been heard or invited by the Prosecutor in Belgium, any police organization or any other authority
c) Have never been involved in any criminal or illegal activity
d) Have a legitimate business operation asserted by documents from the High Council and the Diamond Office in Antwerp, checked for the origin by the customs authorities and forwarded to the HRD Diamond Office Antwerp (Diamond High Council).
e) Are situated in the heart of Antwerp working closely with the most respectable representatives in the Diamond business

12.

It is unlikely that when a person or company stands accused by a Panel Report, a democratic Government would give support unless it is sure of your correctness whereas all imports from diamonds are legal and a full audit can be provided.

The definition of a conflict diamond itself could be rendered meaningless. According to the World Diamond Council a "conflict diamond" is a diamond imported in violation of law or resolutions of the United Nations, intended to end trade in diamonds extracted from "Conflict Regions". Obviously, having imported diamonds legally into Belgium and in accordance with UN resolutions makes a diamond not a conflict diamond according to the World Diamond Council or any other standard.

It should also be clear that parties mentioned are fully committed to the UN's position relating to conflict diamonds.

13.

Parties mentioned defend themselves with the firmness and the certitude of being wrongly accused.

It needs no argument that an enormous injustice is committed and it is a shame when, in the name of the United Nations, persons and companies are branded worldwide on the internet, merely based on rumors, false information or hearsay, without any further interest in the accuracy of the information that is spread or the severe consequences for the people involved.

In such case arbitrariness rules and everyone that is pointed at is declared an outlaw without any further defense.

Parties mentioned are well aware that representatives of Member States to principal and subsidiary organs of the United Nations enjoy immunity from legal process in respect of words spoken or written and all acts done in capacity as such a representative. Parties mentioned are also aware that, moreover, the United Nations also enjoys immunity from every form of legal process. That having been said, parties mentioned only requested the opportunity to present their defense, to have their arguments verified and to be confronted directly with any information that would be held against them and this was simply denied in breach with Resolution 1457 (2002) that ordered the Panel to do so.

14.

In the report of the Panel of Experts it is nowhere stated which *"evidence"* would allow to utter accusations against parties mentioned.

At most one is rendering a self-account, where one should accept that only information would have been used that has been confirmed by more than one source?

The Panel calls a summary of the allegations "evidence"…?

This way nothing more than *"belief"* is requested for the used working-method, without the necessary effort to show what *"reliable"* information would be at hand and what verifiable criteria would have been used.

It is also to easy to us the term *" known to intelligence services and police organizations "*
(See report § 34 page 9)

Of which services and organizations is the Panel talking about?

Parties mentioned have been living and working in Belgium for years at the same address in Antwerp, together with their family.

Parties mentioned have a clean criminal record, have never been accused of anything illegal by the authorities and have never been invited to give any declaration or even answer any question by such authorities.

15.

There is a clear contradiction in the report.

If the information would be correct - which it is not - there would at least have been a disturbance in some way by Belgian or other authorities and at least someone would have been interrogated, accused or under investigation (if not arrested), quod non.

If the investigation of such criminal activities however, were to be held so secretive that they are only known to " intelligence services " it would be incredible to publish such secret information worldwide on the Internet in a report that is read by millions of people.

Parties mentioned can only base themselves on the certainty that they have not infringed any embargo or law and that they did not, neither directly, nor indirectly, nor in person, nor as a middleman, nor by means of companies or third parties, not in any other way of form dealt in so-called conflict diamonds or have been associated with any criminal or unethical activity.

A legal adage states *"negativa non sunt probanda"*, which means that negative facts cannot be proven.

The above-mentioned adage is based on the idea that it is practically impossible to give evidence of a negative fact.

How can someone (or a company) proof that he (it) did <u>not</u> do something during a well-defined period of time?

The only possibility that is available is to proof an opposite positive fact or a series of positive facts that can exclude the negative fact.

If parties mentioned would have been contacted before the publication of the report on the Internet, damage could have been avoided and parties mentioned would have been able to show on forehand that the information the Panel obtained was clearly false.

The Panel was invited on numerous occasions to provide a copy of one record of proof against parties mentioned, that cannot exist for the simple reason that parties mentioned did not do what they are accused of.

Providing a summary of allegations, made up by the Panel itself, and handing over one additional document, an official import license for one shipment, is no evident whatsoever.

This meets only the letter of the Resolution 1457, not the spirit!

16.

Parties mentioned have to suppose - for the time being - that the Panel should have received some information that has led to the mentioning of their names in the report.

Parties mentioned have to accept - for the time being - that wrong and false information has been provided, by which the

Panel could have been misled and bad intent cannot be excluded where such negative publicity favors some competitors.

Parties mentioned however are left in the dark and did not receive any information and/documentation and/or explanation from the Panel.

It is in the interest of the Panel to test the truthfulness and the reliability of the information received together with the requestors and based upon the data they provide.

On at least two occasions a Panel of Experts made wrong accusations in a report and a correction had to be made after presentation of the defense:

17.

In the first report, published on the Internet, of this Panel of Experts regarding the Democratic Republic of Congo dd. 12 April 2001 (S/2001/357) a firm ARSLANIAN FRERES NV was heavily accused as follows:

"*ARSLANIAN,* ***the conflict diamond dealers*** *in the Eastern Democratic Republic of the Congo, provided on average 2.000.000$ per year, each directly to the Congo desk …"*
(See Report Panel of Experts of 12 April 2001, p.29, nr. 127)

After ARSLANIAN FRERES NV defended itself on these accusations the name was completely removed from the final report and, on the contrary, in annex IV of the report the Panel of Experts expresses its **deep appreciation and gratitude** towards ARSLANIAN FRERES for having assisted the Panel of Experts in making the report (see annex IV report S/2002/1146)

ARSLANIAN FRERES was wrongfully accused and a correction was made, much to the honor of the Panel of Experts.

18.

The same happened with a firm called MACKIE DIAMONDS in Antwerp.

In the original report of the Panel of Experts regarding Angola it was stated:

"*76. Azet Mohammed, who holds a British protected citizen passport, was arrested in March 2001. He was arrested for possession of a parcel of diamonds worth $100,000. Mohammed was described as the "lieutenant" of diamond dealer Ali Mackie Fouad Abess, of Mackie Diamonds in Antwerp, a Lebanese diamond dealer who was also a dealer in Sierra Leonean diamonds. Mackie, who holds a United States passport, began working in Angola in late 1999. He was deported from Angola for possession of false papers when Mohammed was arrested. Mackie's activities in Angola are under investigation.*"
(See letter Chairman Mr. Richard Ryan, Security Council Committee dd. 16.04.2001, p.20, nr. 76)

Also these accusations were proven completely false and - after presentation of the defense - were corrected in a following report.:

"Correction

221.Contrary to the information contained in paragraph 76 of the Mechanism's previous report (S/2001/363), there is no person know as Ali Mackie Fouad Abess. Mr. Ali Mackie, who has

never been known by name or nickname as Fouad Abess, does not have any relationship with Mohammed Azet. Mr. Ali Mackie, a Belgian citizen of Lebanese origin, is the owner and director of Mackie Diamonds in Antwerp. He does not possess a United States passport. He was neither arrested in, nor deported from, Angola. While Mr. Mackie had business interests in Angola prior to 2000, the Angolan authorities have not reported any investigation into his activities in Angola."
(See UN report on Angola S/2001/966 dd. 12 October 2001, p.43, par. 221)

At least these two clear examples prove that there certainly is a possibility that wrongful accusations were uttered and corrections are necessary.

19.
In spite of the damage that was done parties mentioned wanted to accept - for the time being - that the Panel acted in good faith and that it only concluded upon false, faulty or wrong information that has been given to them, if such information exists.

To avoid arbitrariness it is necessary that the concrete facts and elements on which the allegation is based, are at least retrievable, quod non.

At least parties mentioned <u>should have been allowed</u> to defend themselves with a full knowledge of the facts and minimal to be able to know some motive that would make a minimum of control or contradiction possible, quod non.

I presume every reasonable man should agree that arbitrariness is unacceptable.

From a normal cautious and careful person it can be expected that he seeks the truth by controlling his facts as much as possible and that he refrains from spreading rumors that could damage a party if he is not able to show the truthfulness of such rumors

20.

Declaring in public without being able to provide any proof or fact that parties mentioned would be involved in illegal or unethical activities would constitutes a crime of slander and defamation according to standards of many legislation, not only Belgian law.

Parties mentioned could accept that the original goal of the Panel is a noble goal that deserves all means and attention but on the other side this does not mean that all elementary principles of law can be put aside and companies or persons can be branded based only on mere malicious rumors and allegations.

In such case we honestly speak of a witch-hunt, were arbitrariness rules and everyone that is pointed at is declared an outlaw without any further defense.

The term witch hunt is not farfetched if there is no control on the investigation, if there is an absolute immunity for the prosecutors, a complete anonymity regarding alleged sources of information, no necessity to present evidence, no possibility

of contradiction, no possibility to defend or reply and in the end the accused is asked to accept what is to him only a pattern of slander and defamation.

The Panel should not be allowed to hide behind the so-called safety of it sources and therefore being capable of providing no evidence whatsoever and to consider itself unbound by any due process of law.

When in the medieval age the Inquisition wanted to protect a witness who was ready to testify that he/she had seen a suspect communicating with the devil the witness was allowed to appear in court with a mask, or hood, over the face. This was how the court heard the "truth", and the witness was protected from the evil eye of the witch who might take revenge after being burned at the stake.

What can not be allowed, if we do not want to turn back the clock 500 years, under any circumstances is the permanent concealment of the identity of so-called witnesses, neither the refusal to present any document or the content of any declaration whatsoever and this on "grounds of confidentiality"

One can ask what kind of witness would exist that can give the Panel confidential information and then can refuse to answer further questions as to how such information was obtained or even the accused to verify the content of a declaration.

Going on the statements of the Panel itself as a rule this could be an undercover agent, who have been necessarily

operating illegally in foreign countries in order to collect information that cannot be obtained by regular means.

It is clear that such "*evidence*" can not be excepted as valid and such clandestine witnesses can not be believed at all, more over where it is not even certain that the Panel is basing itself only on information received from undercover agents but could also exclusively be receiving very dubious information from competitors of parties concerned or any other party with an interest to damage parties concerned.

The court in Antwerp, which can be quoted as follows, gave a relevant judgment:

> *"By the public prosecutor no further information is given, nor is there a document rendered regarding the fact. In a former cession already a postponement was given in order to obtain permission from the State's Security Services to deliver documents in order to be able to judge the related, serious facts. For one reason or another no documents are rendered.*
> ***It is unacceptable that certain facts are quoted by the State's Security Services without producing any document of whatsoever to substantiate this allegation and without any right of the concerned person to defend himself.***
> ***Such an attitude witnesses an unacceptable disapproval for the rights of defense. As much unacceptable is the fact that the court would be expected to judge a person without the judge even being able to render any control or to be able to judge a fact that is quoted against the concerned person..."*** (See Rb. Eerste Aanleg Antwerp, 12 February 2001, ongepubl., Seber / OM).

It is of course unacceptable that any Panel would be able to give unfounded allegations from a position of complete anonymity and immunity towards companies and persons and that these accused companies of persons should be sanctioned or even threatened in their existence, without any appropriate right of defense, especially if this is done under the name of the United Nations.

21.

Parties mentioned were ready to be confronted with each document, declaration or any other information that would have given rise to the mentioning of their name and the incorrect accusations coupled hereto and from which confrontation it would have been crystal clear that the requestors have been wrongly accused.

In breach with Resolution 1457 (2003) of the Security Council the Panel of Experts refused to provide any documentation and /or information as it was ordered to by the Security Council to do before 31 March 2003 and did not comply with it, not to the letter and certainly not to the spirit of the Resolution.

The only conclusion can be that the name of parties concerned should be cleared and explicit correction should be published.

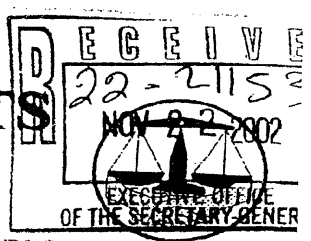
Yours Sincerely,
For the requestors, their Attorney at law,

Mr. M. De Block
Antwerp, 27th of May 2003

Reaction No. 45



CABINET D'AVOCATS ASSOCIES



Roger Victor KIYAMBI KALONDA
Marie- Louise OKAKO AHONDJU

Stanislas NDUITE KEBEKETIE

OTSCHUDI OMANGA Jean- Pierre
DIKOMO WELO Antoine-Stanis

Kinshasa, le 04 novembre 2002.

***OBJET* : Transmission réaction de l'Ex-Ministre des Mines ; Monsieur Frédéric KIBASSA MALIBA aux conclusions du Groupe des Experts des Nations – Unies sur le pillage des richesses congolaises.**

Excellence, Monsieur le Secrétaire Général
des Nations – Unies,

La protection des droits de l'homme, qui constitue l'un des buts des Nations -Unies au même titre que le maintien de la paix et le développement économique et social nous contraint de vous transmettre le mémorandum relatif à l'objet repris sous – rubrique et vous prie de bien vouloir le transmettre au Président du Conseil de Sécurité des Nations – Unies à New – York (USA).

Nous vous en souhaitons bonne réception en vous priant de bien vouloir ,eu égard à la gravité des allégations soutenues contre le Ministre KIBASSA MALIBA , de transmettre dans les meilleurs délais au destinataire.

Nous vous prions d'agréer, Monsieur le Secrétaire Général, l'assurance de notre très haute considération.

Maître OTSCHUDI OMANGA

Avocat à la Cour.

MEMORANDUM A LA BIENVEILLANTE ATTENTION DE SON EXCELLENCE MONSIEUR LE PRESIDENT DU CONSEIL DE SECURITE DES NATIONS-UNIES A NEW-YORK

TRANSMIS COPIE POUR INFORMATION A :

- SECRETAIRE GENERAL DES NATIONS - UNIES
- SECRETAIRE GENERAL DE L'UNION AFRICAINE

Cette souscription insignifiante et symbolique, car ne représentant que 0,2 % du capital social de la COSLEG n'avait pour but que de répondre aux exigences du Décret du 27 février 1887, tel que modifié par le Décret Royal du 22 juin 1926 sur les sociétés par actions à responsabilité limitée et les règles applicables aux investissements étrangers ;

Les Décrets susvisés, tels que modifiés par le Décret du 23 juin 1960 sur les sociétés commerciales, exigent que l'acte constitutif reçu dans la forme authentique, constate qu'il y a sept associés au moins, à l'instar des droits des sociétés belge et français, d'une part, et que le même acte constitutif constate également que le capital social est intégralement souscrit et que chaque apport ou action est libérée d'un cinquième au moins par un versement en numéraire ou par un apport effectif d'autre part.

Cette infime souscription ne pouvait ni donner droit à une quelconque dividende ni permettre l'accès aux organes qui assurent l'administration de la Société COSLEG à savoir le Conseil d'Administration, l'Administrateur Délégué, à qui est confié l'accomplissement des actes de gestion courante ou journalière et enfin le Président Directeur Général.

N'étant ni Administrateur, ni Administrateur Délégué, ni encore moins Président Directeur Général, il ne pouvait gérer à un quelconque titre cette société purement privée, ni éventuellement en détourner les fonds ; la COSLEG étant une personne juridique privée, on ne peut pas à bon droit parler de détournement des richesses nationales ou de deniers publics ; et si par impossible, il y a eu détournement ou pillage, *quod non in specie*, il ne saurait s'agir que des fonds privés et non publics détournés au détriment d'une société privée par les organes de gestion au sein desquels le Ministre KIBASSA ne prenait pas part.

Par ailleurs, la souscription de deux actions symboliques par lui s'inscrivait dans le droit fil de l'Ordonnance-Loi n° 86-028 du 05 avril 1986 portant Code des Investissements qui définit les conditions d'admission des investissements étrangers, les avantages économiques, financiers et fiscaux dont ils bénéficient ainsi que les obligations qui incombent à leurs auteurs.

Cette loi instaure le régime d'autorisation qui reconnaît à l'Etat un droit de regard sur les investissements importants qui se réalisent en République Démocratique du Congo ; L'Etat Congolais est donc légitimé, de par la loi susvisée, à effectuer une surveillance sur ces investissements et à prendre des mesures préventives dictées par l'intérêt général ; cela se justifie du reste par le fait que la définition de la politique économique relève de la compétence exclusive de l'Etat ; c'est donc aux fins de suivre indirectement la marche des affaires de l'Etat que les Ministres souscrivent des actions symboliques.

Dans cette perspective, ne devaient être admis au Congo que les investissements de nature à contribuer au développement économique du pays ; ceux qui, en plus de la rentabilité financière affichée, se révèlent être d'une importance exceptionnelle pour le développement économique et social du pays, bénéficient d'un régime conventionnel comportant des avantages plus étendus que ceux du régime général.

S'agissant de la Société SENGAMINES, il faut rappeler que le Ministre des Mines n'a fait qu'appliquer la politique du Gouvernement en la matière, laquelle consiste à éviter le gel de concessions minières ; notons à ce sujet, que Senga-Senga n'était pas un gisement primaire contrairement à Tshibwe dont il (Senga-Senga) constitue les alluvions abondamment exploités par la MIBA dans le passé et aujourd'hui clandestinement par la population.

L'Etat Congolais estima à l'époque que cette situation ne permettait pas à la Société SENGAMINES de mobiliser les capitaux indispensables à la rentabilisation de ses opérations minières à partir desquelles le Gouvernement entendait tirer les moyens de sa politique en temps de guerre.

Dès lors, le gisement primaire de Tshibwe et ses alluvions de Senga-Senga devaient constituer un seul projet rentable ; le Gouvernement approuva ainsi le montage de participations prévu dans le Protocole d'Accord COSLEG-MIBA du 22 juillet 1998, avec cette différence que COSLEG, comme investisseur crédible, se substitue à la DE BEERS avec 50 % et l'Etat Congolais 50 % ; ce dernier se réserva 50 % d'actions dans cette société, contrairement aux 40 % prévus par les Accords MIBA-NEWCO.

Dans cette optique, la MIBA céda ses titres miniers ainsi que toute la documentation géologique et minière sur le gisement de Tshibwe à la SENGAMINES ; en contrepartie, elle reçut une créance sur la SENGAMINES, représentant le coût de tous les travaux géologiques et autres réalisés par elle, créance qui sera transformée plus tard en actions au profit de la même MIBA qui, du reste, recherchait des investisseurs crédibles techniquement et financièrement pour développer son complexe minier de Tshibwe dont l'exploitation n'a jamais démarré depuis plusieurs années.

Il va donc sans dire que le projet SENGAMINES, entièrement financé par le groupe ORIX, s'intègre dans la politique d'investissement minier de la MIBA.

Sur ordre du gouvernement, le Ministre des Mines autorisa la cession des certains droits miniers de la MIBA à la SENGAMINES et ce, conformément à l'article 26 de l'Ordonnance-Loi n° 81-013 du 02 avril 1981 portant Législation Générale sur les Mines et les Hydrocarbures qui dispose que :

« Les permis d'exploitation et les concessions sont cessibles et transmissibles à toute personne présentant les garanties exigées par les articles 7 et 22 b, sous réserve de l'autorisation du Commissaire d'Etat (Ministre) ayant les mines dans ses attributions et après avis conforme du service des Mines ».

Ainsi donc, en contrepartie de sa créance sur la SENGAMINES, La MIBA devint actionnaire dans cette dernière.

Tel qu'il se présente, le projet SENGAMINES est conforme au droit international public qui pose comme principe que chaque Etat admettra des investisseurs étrangers, conformément à sa législation et à ses règlements ; le pouvoir que l'Etat Congolais détient en cette matière est discrétionnaire en ce sens que le refus d'admission d'un investisseur ainsi que l'exclusion d'un investissement admis peuvent ou non être motivés.

II. EN DROIT

D'abord, en droit congolais, le Ministre est l'autorité compétente pour tout le territoire et spécialisée dans les matières dont il a la responsabilité ; il se trouve au point de rencontre du politique et de l'administratif. Ainsi le Ministre KIBASSA avait normalement le pouvoir réglementaire pour tout ce qui est du ressort du Ministère des Mines dont il était chargé, y compris pour la Police des activités minières.

Ensuite, en exécution de l'Ordonnance-Loi n° 81-013 du 02 avril 1981 portant Législation Générale sur les Mines et les Hydrocarbures ainsi que de l'Ordonnance n° 67-416 du 23 septembre 1967 portant règlement minier, le Ministre KIBASSA MALIBA avait le pouvoir de prendre des mesures réglementaires par voie d'arrêtés ; les textes juridiques précitées lui conféraient le pouvoir de réglementer le domaine minier de la République Démocratique du Congo, et plusieurs prérogatives notamment :

1° le droit de fixer les règles de forme et de procédure pour encadrer toute opération minière ; autrement dit, dans l'intérêt du domaine minier, il pouvait combler le vide procédural en édictant toutes mesures utiles ou constructives concernant la susdite procédure ;

2° le pouvoir de prendre des décisions individuelles, pouvoir impliquant celui d'adopter et de publier les règles générales en vertu desquelles ces décisions seront prises, à la double condition, d'abord que ces règles ne contredisent pas celles incluses dans l' Ordonnance-Loi et Ordonnance précitées, ensuite qu'elles ne suppriment pas toutes les fois qu'il est nécessaire, l'appréciation des circonstances propres à chaque cas individuel ;

3° le pouvoir d'enjoindre aux administrés de lui fournir les renseignements qu'il juge nécessaires avant de prendre sa décision ;

4° le pouvoir de prendre des mesures d'exécution des lois et des règlements ; il importe de préciser ici que les arrêtés d'exécution restent des instruments au service de la norme supérieure dont ils assurent la mise en œuvre ; s'ils peuvent compléter et aménager les dispositions contenues dans cette norme, ils ne peuvent en aucune manière y porter atteinte ni aller à leur encontre ; elles devront être, pour eux, intangibles et infranchissables : bref, le texte à appliquer guide et contient tout à la fois le règlement d'exécution ;

Il en résulte que le Ministre des Mines ne pouvait édicter aucune règle sortant du cadre tracé ou contrevenant à la volonté explicite ou implicite de son auteur, il avait le pouvoir de mettre en œuvre les principes posés par l'Ordonnance-Loi et l'ordonnance précitées, non celui de les mettre en cause, il leur était loisible d'en développer les conséquences, mais les arrêtés ministériels ne pouvaient ni les contredire, ni en modifier le sens ou la portée.

Si les arrêtés ministériels d'exécution ont le droit et même le devoir de seconder la norme supérieure, ils ne sauraient jamais la desservir : en d'autres termes, les arrêtés du Ministre des Mines devaient être en harmonie parfaite avec les textes juridiques auxquels ils se rattachaient ;

En somme, l'obligation pour les arrêtés de respecter les principes posés par la règle qu'ils appliquent emporte deux grandes séries de conséquences : il leur est, en premier lieu, interdit de modifier le champs d'application de la règle ; il leur est également défendu de transgresser une quelconque de ses dispositions.

En l'espèce, la fidélité des arrêtés d'exécution aux textes dont ils assuraient la mise en œuvre n'est pas contestable car l'exigence de non-contrariété et l'obligation d'édicter une réglementation conforme au sens général des textes juridiques susmentionnées et au dessein poursuivi par le législateur furent bel et bien remplies par le Ministre des Mines.

Par conséquent, celui-ci doit être considéré comme ayant agi dans le cadre des lois de la République qui lui conféraient le pouvoir d'octroyer les droits miniers, l'établissement des zones d'exploitation artisanale et enfin l'agrément des comptoirs d'achats de substances minérales précieuses (or et diamant) ; ces lois lui reconnaissaient d'autres attributions, notamment l'octroi des droits de carrières pour les substances minérales autres que les matériaux de construction à usage courant.

Enfin, les arrêtés et autres décisions pris par lui sont des actes accessoires et subordonnés aux textes juridiques supérieurs précités ; ils ne peuvent être illégaux que pour autant qu'il serait démontré qu'ils ont contrevenu aux dispositions des règles dont ils assuraient l'exécution, or rien de tel n'a été démontré en l'espèce.

Il s'ensuit dès lors que les Experts des Nations-Unies ont condamné le Ministre KIBASSA sans avoir même pris la précaution la plus élémentaire de vérifier les faits ni de l'entendre, foulant ainsi aux pieds et sciemment les droits de la défense notamment les principes de la présomption d'innocence et du contradictoire consacrés aussi bien en droit interne qu'en droit international.

En effet, s'il est vrai que le Groupe d'Experts peut effectuer seul certaines constatations, il ne demeure pas moins que c'est à la condition de fournir aux parties tous les éléments utiles à la discussion.

Pour le cas précis, il appartenait au Groupe d'Experts de se conformer aux principes susévoqués, et particulièrement celui relatif à l'administration de la preuve ; or ce dernier n'a fourni la moindre preuve de ses allégations, alors qu'en droit, il ne suffit pas d'affirmer ou d'avancer les prétentions mais il faut en plus les prouver par des éléments nécessaires et suffisants en vertu de l'adage *Actor incumbit probatio*.

Il est opportun de souligner que l'honneur du Ministre KIBASSA jeté en pâture, l'opprobre et le dénigrement dirigés contre sa personne ne se fondent sur aucune preuve démontrant qu'il avait commis un excès ou un détournement des pouvoirs en violation flagrante de la loi, dès lors qu'il agissait dans le cadre de ses attributions.

Si les principes juridiques intangibles susvisés avaient été respectés par le Groupe d'Experts, celui-ci se serait rendu compte que les accusations particulièrement graves portées contre Monsieur KIBASSA, pour des faits prétendument commis alors qu'il était Ministre Congolais des Mines, sont non seulement sans fondement aucun mais aussi constitutives d'autant de fautes dommageables.

III. CONCLUSION

Les développements qui précèdent démontrent que :

- les mesures prises par le Gouvernement de la République Démocratique du Congo dans le cas sous revue ont un fondement légal et procèdent des pouvoirs qui lui sont reconnus en matière de politique économique ;

- elles ont été dictées dans le but de préserver l'intérêt général et de réorienter les actions dans l'intérêt majeur de la nation congolaise agressée ;

Les conclusions du Groupe d'Experts sont téméraires et vexatoires et nécessitent une réparation au profit du Ministre KIBASSA.

Du reste, en droit international, les dispositions conventionnelles, coutumières et jurisprudentielles reconnaissent à tout gouvernement admis par la Communauté Internationale, le droit d'exercer, selon son appréciation discrétionnaire, sa pleine et entière souveraineté sur son territoire, ses richesses naturelles et ses activités économiques.
Dès lors, toutes conventions minières conclues, tous droits miniers octroyés par le Ministre KIBASSA dans le cadre de ses prérogatives de Ministre des Mines, l'ont été en bonne et due forme selon la loi minière congolaise.

En conséquence, et sous réserve de tous ses droits, notamment celui de demander réparation pour préjudice subi et sans aucune reconnaissance préjudiciable, Monsieur KIBASSA MALIBA conjure le Secrétaire Général des Nations-Unies, de bien vouloir mettre un terme à ce qui ressemble à une diffamation et à l'atteinte portée à son honneur et à sa considération.

Dans le cas contraire, sous huitaine qui suivent la présente, il saisira les Instances Internationales Compétentes en la matière pour que justice soit faite.

Pour Monsieur Frédéric KIBASSA MALIBA

Son Conseil

Maître OTSCHUDI OMANGA

Avocat à la Cour

AMPLIATIONS :

Secrétaire Général des Nations – Unies ;

Secrétaire Général de l'Union Africaine.

Reaction No. 46

KISIMBA-NGOY NDALEWE
Avocat près la Cour Suprême de Justice
Membre de l'Association du Barreau Américain
BANZA NGENDA
LUKAMBA MUGANZA
Victor BOLUTA-LOELELE
ILUNGA LWANZA
Sylvie MUTAMBA NGWEJ
NGOY KABWE Ruffin
Avocats près la Cour d'Appel
KINSHASA/GOMBE



Kinshasa, le 28 avril 2003.

Monsieur le Secrétaire Général,

Par la Présente, j'ai l'honneur de vous transmettre, pour disposition et compétence, le plaidoyer de Monsieur YUMBA MONGA contre les accusations du rapport final n°S/2002/1146 de l'O.N.U. mises à sa charge.

Je saisis cette occasion pour vous demander de nous communiquer la date à laquelle Monsieur UMBA MONGA sera entendu par le Groupe d'Experts de l'O.N.U. installé à Nairobi pour cette fin.

Je vous en souhaite bonne réception.

Veuillez agréer, Monsieur le Secrétaire Général, l'assurance de ma considération très distinguée.-

Me ILUNGA LWANZA.

PLAIDOYER DE MONSIEUR YUMBA MONGA CONTRE LES ACCUSATIONS DU RAPPORT FINAL S/2002/1146 DE L'ONU MISES A SA CHARGE.

PAR :

MAITRE ILUNGA LUANZA
AVOCAT

PLAIDOYER DE MONSIEUR YUMBA MONGA CONTRE LES ACCUSATIONS DU RAPPORT FINAL S/2002///1146 DE L'ONU MISES A SA CHARGE.

I.- IDENTITE.

Mentionnons, au préalable, pour mémoire que Monsieur YUMBA MONGA de nationalité congolaise qui, en raison de sa qualité de Président du comité de gestion provisoire de la GECAMINES d'alors est malencontreusement mis en cause par le rapport précité est né à Kiwala, le 15 novembre 1947, Territoire de Malemba-Nkulu, District du Haut Lomami, Province du Katanga. Il est certes Ingénieur civil métallurgiste avec mention distinction, promotion 1972 de l'Université Officielle du CONGO-UNAZA, Campus de Lubumbashi.

Durant plus de 30 ans de bons et loyaux services au sein de la GECAMINES, il a exercé tour à tour les fonctions suivantes :

- 1972-1974 : Ingénieur Chef de Service à la Société Métallurgique de Kolwezi produisant le zinc et le cadmium ;
- 1974-1976 : Stage de formation en Europe (Belgique, Angleterre, Finlande) ;
- 1976-1978 : Ingénieur d'étude au plan quinquennal n°2 de développement de la GECAMINES ;
- 1978-1980 : Directeur de l'usine à zinc de Kolwezi ;
- 1980-1983 : Directeur des usines de cuivre et cobalt de Luilu ;
- 1983-1985 : Directeur-Adjoint des opérations du groupe centre de la GECAMINES à Likasi ;
- 1985-1993 : Directeur des opérations du groupe centre de la GECAMINES à Likasi ;
- 1993-1997 : Directeur technique de la GECAMINES ;
- 1997-1998 : - Délégué Général Adjoint de la GECAMINES ;

  Est-il besoin de signaler à cet égard qu'à la prise du pouvoir d'Etat par l'AFDL à Lubumbashi, les nouvelles autorités avaient, à l'instar de ce qu'elles avaient fait dans d'autres provinces, organisé des élections au sein de la GECAMINES en consultant deux catégories du personnel de la société, en l'occurrence les grands directeurs hiérarchiques de la société et les délégués syndicaux, en vue de désigner les responsables capables de présider aux destinées de la GECAMINES. Ainsi, les scrutins ont-ils donné les résultats suivants : P.D.G. : Mr YUMBA MONGA et D.G.A. Mr MBAKA KAWAYA.

  Mais, contrairement à la ferme volonté exprimée par l'ensemble du personnel de la GECAMINES de voir la direction de la société confiée à Mr YUMBA MONGA assisté de Mr MBAKA KAWAYA, le choix des autorités de l'AFDL sera, contre toute attente, porté sur Mr MBAKA KAWAYA, P.D.G. assisté de Mr YUMBA MONGA, D.G.A. Comme on le voit, ce choix, pour le moins surprenant, a constitué aux yeux des personnes averties non seulement un mauvais présage, mais aussi un précédent fâcheux pour les relations futures que le gouvernement devrait entretenir avec Mr YUMBA MONGA.

  - Président du Conseil d'administration de l'AMC (filiale commune commerciale de la Gecamines et de l'Union Minière pour la vente du cobalt aux U.S.A.).
- 1998-2001 : Conseiller du P.D.G. de la GECAMINES.

- Août 2001 - septembre 2002 : Président du comité de gestion provisoire de la GECAMINES. (Cotes 1 à 2 dossier des pièces de preuve).

II. EXPOSE DES FAITS ET RETROACTES.

Dans le souci bienveillant de permettre aux enquêteurs aussi bien internationaux que nationaux de saisir les contours et la quintessence des actes malencontreusement mis à charge de Mr YUMBA MONGA, Président d'alors du comité de gestion provisoire de la GECAMINES, il est de bon aloi que l'histoire pathétique de la déconfiture de la GECAMINES soit brièvement rappelée à l'attention particulière des investigateurs.

Pour mémoire, signalons de prime abord que depuis la découverte au Katanga des gisements d'un potentiel fabuleux de cuivre, de cobalt, de zinc et des minerais connexes dont les réserves géologiques sont évaluées à 24.000.000 tonnes de cuivre, 2.100.000 tonnes de cobalt et 6.400.000 tonnes de zinc, les mines congolaises occupent sans nul doute possible une place de choix dans l'industrie minière internationale. Ce faisant, elles n'ont jamais cessé d'attiser la convoitise des milieux financiers internationaux. Voilà pourquoi, l'ancien président Chinois Mao Tsé -Toung avait déclaré haut et fort que si on lui donnait le Congo, il aura le monde entier à sa traîne.

Jadis, les colons belges, dans l'intérêt bien compris de compenser les maigres résultats de production durant la première exploitation de ces réserves importantes par l'Union Minière du Haut-Katanga, « U.M.H.K » en sigle, ancêtre de la GECAMINES, avaient en effet jugé nécessaire et indispensable de recourir au partenariat, formule actuellement décriée par le rapport de l'O.N.U. En effet, ce partenariat consistait à confier en exploitation certains petits gisements à des entrepreneurs locaux qui travaillaient pour le compte de l'U.M.H.K moyennant certaines rétributions contractuelles. Tel fut bien le cas de SWANEPOEL et de FORREST.

Sans doute aussi, à cause de faibles moyens mécaniques dont disposait naguère la GECAMINES, plusieurs autres gisements furent-ils soit exploités partiellement soit laissés à la merci de la nature providentielle en attendant un éventuel acquéreur.

Or, en dépit de contraintes de nature diverse, il est apparu que vers les années 1980, la GECAMINES, poule aux œufs d'or de l'Etat congolais, est cependant parvenue à célébrer ses années fastes et de gloire avec une production minière qui avait atteint en 1986 le record de 476.033 tonnes de cuivre, 14.518 tonnes de cobalt et plus 63.914 tonnes de zinc.

Mais, en raison du défaut d'investissements conséquents consentis au profit de la GECAMINES, sa production a, à cause d'une gestion à la petite semaine, baissée de façon progressive pour atteindre en l'an 2000, 27.000 tonnes de cuivre, 3.500 tonnes de cobalt et 214 tonnes de zinc. Bien évidemment, cette production ne représente plus que le dixième du niveau nominal.

Notons bien que cette situation catastrophique dont les effets pervers ont durement affecté l'économie congolaise qui dépend à 95% de l'activité minière a été davantage exacerbée par des causes aussi bien endogènes qu'exogènes. Au nombre de ces causes, figurent en bonne place les ponctions financières à répétition opérées sur les comptes de la société par l'Etat congolais, propriétaire de la GECAMINES, le retard dans la découverture des mines à ciel ouvert, le retard

dans la réalisation de grands projets miniers et métallurgiques, l'effondrement de la mine de KAMOTO en 1990, le sous-investissement par l'Etat congolais, propriétaire de la société, dans le domaine de la restructuration, de la gestion et de la réhabilitation de l'outil de production, l'isolement du pays et, par ricochet, de la GECAMINES par les bailleurs de fonds traditionnels, du fait de la situation politique décriée de la R.D.C. ainsi que les troubles socio-politiques, causes d'instabilité et de fuite des cerveaux de la GECAMINES.

Point n'est besoin de démontrer que cette situation s'est fortement dégradée, au point que la GECAMINES, avec une dette évaluée à plus d'un milliard de dollars US, n'est plus en mesure ni d'honorer ses engagements envers ses partenaires tant nationaux qu'internationaux, ni de jouer son rôle traditionnel de fer de lance de l'économie nationale.

Aussi, la GECAMINES qui n'a plus accès au financement de ses bailleurs de fonds internationaux ne dispose-t-elle plus de fonds nécessaires pour assurer non seulement le renouvellement en pièces de rechange et en consommables, mais aussi le salaire de son personnel évalué à 24.000 travailleurs totalement démotivés, à cause du fait que son pouvoir d'achat s'est fortement effrité.

Voilà pourquoi, pour faire face à cette situation apocalyptique de la GECAMINES, les autorités nationales ont, sur recommandation des bailleurs de fonds internationaux, en l'occurrence la BIRD, la BAD, la BFI, le FMI, la BM, l'UE, élaboré de nouvelles stratégies de survie de la société d'Etat axées à la fois sur la restructuration de la gestion, la réhabilitation de l'outil de production ainsi que sur le recours au partenariat en association momentanée ou en joint-venture pour l'exploitation de petits gisements miniers.

En effet, selon les grands axes du plan de redressement de la société d'Etat arrêté depuis 1994, il ressort que sous la formule d'association momentanée, la GECAMINES reste propriétaire des droits miniers ainsi que des actifs mobiliers et immobiliers. Ce faisant, elle reçoit non seulement un solde du partage des bénéfices réalisés, mais aussi un loyer sur les actifs ainsi que des royalties pour l'exploitation de ses gisements sélectionnés sur base de la capacité aussi bien technique que financière du partenaire. Le partenaire quant à lui reçoit sa part du bénéfice ainsi que le paiement d'éventuelles prestations consenties au profit de l'association momentanée.

Cependant, sous la formule de joint-venture, les droits miniers sont cédés à la société commune (joint-venture) contre paiement dans certains cas d'une contrepartie financière destinée au financement de la réhabilitation de l'outil de production de la GECAMINES, en vue de le rendre viable. La société ainsi constituée a une personnalité juridique propre distincte de celle de ses associés. Toutefois, sous cette formule, la GECAMINES y bénéficie du paiement éventuel du droit d'accès non remboursable ou des royalties ainsi que du partage des résultats via ses parts dans le capital social de la jointe-venture.

N'oublions cependant pas que la politique d'association de la GECAMINES avec des partenaires privés qui, par ailleurs, a permis de remettre à niveau certaines unités de production et de prestation des services de la GECAMINES avait commencé en 1995 par le partenariat en zone en dehors des exploitations existantes de la société. En effet, elle avait comme objectif de permettre à la GECAMINES de disposer des revenus réguliers additionnels via sa participation au capital, à travers le payement régulier de royalties, la vente contractuelle des matières premières, les prestations diverses pouvant assurer des rentrées financières rapides et consistantes pour

autofinancer la réhabilitation de ses installations existantes actuellement dans un état de délabrement très avancé, du fait de l'action prédatrice de la Deuxième République.

Il y a lieu toutefois de signaler à cet égard que cette politique de joint-venture destinée à redresser la GECAMINES avait commencé sous la houlette du Feu UMBA KYAMITALA et de YAWILI, respectivement P.D.G. et D.G.A. de la GECAMINES jusqu'en mai 1997. Sans doute aussi, de mai 1997 à août 2001, cette politique s'est-elle poursuivie sous la direction successive de quatre comités de gestion qui se sont relayées à la tête de la GECAMINES, à savoir :

1) MBAKA KAWAYA (P.D.G.) - YUMBA MONGA (D.G.A.) de mai 1997 à nov. 1998.
2) RAUTENBACH B. (P.D.G.) - KITANGU B (D.G.A.)
3) Georges FORREST (P.C.A.) - KITANGU B. (P.D.G.) - NKULU K (D.G.A.)
4) YUMBA (P.C.G.) - MUKASA (V/P.C.G.) août 2001 à septembre 2002.

Observons cependant que la succession trop rapprochée des Comités de Gestion à la tête d'une société d'Etat, en l'occurrence un Comité de Gestion par an, n'était pas de nature à favoriser une gestion saine et rationnelle des options de développement arrêtées par chaque comité pour relancer la production, ni à exercer une pression suffisamment longue tant sur les structures que sur leurs animateurs.

Quoiqu'il en soit, il importe de relever avec soin que les accords d'association en joint-venture actuellement mis en cause par le rapport de l'O.N.U. ont été négociés et conclus non seulement avec l'autorisation préalable de l'autorité de tutelle, mais aussi et surtout avant l'avènement à la tête de la GECAMINES du comité de gestion provisoire dirigé par monsieur YUMBA MONGA assisté de monsieur MUKASA.

Mais à tous égards, on retiendra que ces accords négociés et conclus par ses prédécesseurs ont, dans leur exécution, posé d'énormes problèmes auxquels le comité de monsieur YUMBA MONGA a dû, en vertu du principe de continuité de services publics, faire face avec courage, honnêteté et responsabilité pour assurer le suivi des engagements pris parfois à l'emporte-pièce. (Cotes 3 à 13, dossier des pièces de preuve).

III.- <u>DISCUSSIONS EN DROIT</u>.

3.1.- <u>Non fondement des accusations mises à charge de Monsieur YUMBA MONGA</u>.

Les faits mis à charge de monsieur YUMBA MONGA, tels qu'ils sont sommairement exposés dans le rapport de l'O.N.U. susvisé et tels qu'ils viennent d'être explicités ci-haut ne sont pas de nature susceptibles de tomber sous le coup d'une quelconque infraction à la loi pénale, encore moins sous le coup de l'association des malfaiteurs, allusion faite au réseau d'élite auquel le rapport tente malencontreusement d'associer monsieur YUMBA MONGA.

En effet, contrairement à ce que d'aucuns pensent, ces contrats dits de marchés des travaux de développement en commun de concession minière sous la formule d'association momentanée ou en joint-venture actuellement dénoncés par le rapport de l'O.N.U. ont été conclus avec l'autorisation préalable de la tutelle de la GECAMINES avant la nomination et la mise en place du Comité de Gestion Provisoire qu'a dirigé Monsieur YUMBA MONGA.

Il va cependant de soi que monsieur YUMBA MONGA et son Comité de Gestion Provisoire ont eu, en vertu du principe de la continuité des services publics, à assurer, sur recommandation de l'autorité de tutelle et du Conseil Supérieur du Portefeuille, le suivi des engagements contractuels pris par leurs prédécesseurs. Ne pas le faire aurait constitué une faute professionnelle grave de nature à entraîner des poursuites aussi bien disciplinaires que judiciaires (Cotes 14 à 15 et 16 à 25, dossier des pièces de preuve).

Signalons par ailleurs que selon l'annonce faite par la voie de presse, les Comités de Gestion Provisoire institués au sein des entreprises publiques, y compris celui dirigé par monsieur YUMBA MONGA l'ont été pour une duré d'un mois. Cette durée va cependant être tacitement prolongée à 13 mois. Alors que la durée normale de fonction d'un comité de gestion d'une entreprise publique est, selon les dispositions des articles 7 et 19 de la loi-cadre sur les entreprises publiques, de 5 ans. Dès lors, l'on comprend bien aisément qu'en raison de son caractère provisoire et de l'impératif du temps lui imparti, ce comité a été, eu égard aux instructions pertinentes du conseil supérieur du Portefeuille, confrontée à plusieurs restrictions d'ordre administratif dans la gestion des affaires courantes de la société d'Etat susvisée.

En effet, par ses instructions datées du 27 août 2001, le Conseil Supérieur du Portefeuille avait expressément rappelé à l'attention particulière des mandataires chargés de Comités de Gestion Provisoire des sociétés d'Etat qu'au regard des dispositions de la loi-cadre régissant les entreprises publiques, la structure organique actuellement mise en place est une exception et mérite des dispositions particulières pour atteindre les objectifs que le Gouvernement de Salut Public s'est assignés (Cotes 14 à 25, dossier des pièces de preuve).

Ainsi, les instructions susvisées précisent-elles formellement que cette structure provisoire qui fait le trait d'union entre la structure sortante et celle attendue a été mise en place par l'Arrêté du ministre ayant le Portefeuille dans ses attributions, lequel lui assigne les missions suivantes :

a) Assurer la gestion courante de l'entreprise jusqu'à la nomination des mandataires par le Chef de l'Etat.
b) Veiller au maintien en état du patrimoine de l'entreprise.
c) Maintenir en place la structure organique de l'entreprise.
d) Finaliser, après analyses, les dossiers en cours de traitements hérités de la remise et reprise.
e) Assurer en qualité de demandeur et de défendeur les intérêts de l'entreprise devant les instances judiciaires et les tiers.
f) Régler, au mieux des intérêts de l'entreprise, tout contentieux en souffrance. (cotes 14 à 15, dossier des pièces de preuve).

3.2.- <u>Des règles de procédure pour la création d'une association momentanée ou joint-venture</u>.

Rappelons au préalable que contrairement à la pratique édictée par le législateur congolais en matière de passation de marchés de travaux publics ou de fournitures des matériels, il n'existait cependant pas au moment des faits dénoncés par le rapport de l'O.N.U. de procédures légalement consacrées pour la passation de marchés de développement en commun des concessions minières avec la participation des investisseurs étrangers.

Voilà pourquoi, en raison de l'absence d'une législation particulière en la matière, le Gouvernement de la République, sur recommandation de ses bailleurs de fonds traditionnels, a toujours négocié ces types d'accords sur base de la procédure d'appel d'offres ou de gré à gré suivant l'importance du projet et sans contrepartie financière.

C'est donc en raison de cette évidence que plusieurs joint-ventures ont été, sur base des directives de bailleurs de fonds internationaux, créées ou sont en voie de création suivant le modèle de CODELCO (Chili) dont la procédure de passation des marchés pour les travaux publics et fournitures des matériels remplace non seulement le cahier de charge par le dossier technique et terme de référence, mais aussi le coût du projet par le payement cash d'un droit d'accès aux gisements.

Tel est bien le cas par exemple du projet TENKE-FUNGURUME confié à la S.M.T.F. qui était un consortium des sociétés conduit par la compagnie anglo-américaine corporation (A.A.C.) et les projets des gisements MUSOSHI et KINSENDA confiés à la SODIMIZA ainsi que les autres projets auxquels le rapport de l'O.N.U. a réservé une attention particulière, en l'occurrence les sociétés FIRST QUANTUM MINERALS (F.Q.M.) , TREMALT et le projet de traitement de scories des usines de Lubumbashi.

3.3.- <u>Du comité de gestion provisoire de la GECAMINES</u>.

Pour mémoire, signalons qu'aux termes des articles 5, 10, 11, 18 et 41 de la Loi n°78-002 du 6 janvier 1978 portant dispositions générales applicables aux Entreprises publiques, les organes d'administration des sociétés d'Etat sont le conseil d'administration et le comité de gestion. A ces organes d'administration s'ajoute l'autorité de tutelle, en l'occurrence les ministères du gouvernement, qui prennent également part à la gestion des entreprises publiques placées sous leur tutelle.

L'examen de l'esprit et de la lettre des dispositions précitées permet de s'apercevoir que le Conseil d'administration qui est un organe délibérant a le pouvoir général de gestion de l'entreprise publique. De ce fait, il engage la société envers les tiers. Tandis que le Comité de Gestion qui est par nature un organe d'exécution a cependant un pouvoir de gestion limité que le Conseil d'administration lui délègue, en vue d'assurer la gestion courante de l'entreprise publique.

Par actes de gestion courante, il faut entendre des actes pouvant être quotidiennement ou journellement passées ou conclus pour assurer la bonne marche de la société d'Etat sans qu'une autorisation préalable soit sollicitée de la part du Pouvoir hiérarchique. A l'évidence, en effet, les actes de gestion courante sont ceux qui sont commandés par les besoins de la vie quotidienne de la société.

Observons cependant que selon les dispositions de l'article 21 de la loi susvisée que les actes relevant de la gestion des affaires courantes de l'Entreprise publique sont signés conjointement par le Délégué Général et un Directeur ou par tout autre agent délégué à cette fin pour le conseil d'administration.

Force est donc de constater qu'en matière de gestion des affaires courantes, la gestion est, en vertu de la loi, confiée non pas à un membre pris individuellement, mais plutôt au Comité de gestion lui-même en tant qu'organe collectif.

Au regard de tout ce qui précède, il en résulte les conséquences suivantes :

1) Le Comité de Gestion Provisoire de la GECAMINES à la tête duquel a été placé monsieur YUMBA MONGA a été institué non pas par un décret du Président de la République, tel que prescrit par la loi, mais plutôt par un arrêté du Ministre en charge du Portefeuille (Cotes 32 à 37, dossier des pièces de preuve).

   Aussi, la durée de fonction du Comité de gestion provisoire dirigé par monsieur YUMBA MONGA a-t-elle été contre toute attente arrêtée à un mois, puis tacitement prolongée à 13 mois, alors que la loi en la matière impose en ses articles 7 et 19 une durée de fonction de 5 ans aux organes d'administration d'une entreprise publique.

2) Le Comité de Gestion Provisoire susvisé a été dépourvu de son Conseil d'administration qui, aux yeux de la loi, est l'organe d'administration par excellence qui a entre ses mains le pouvoir général de gestion de l'entreprise publique. En effet, en privant la GECAMINES de son conseil d'administration, l'autorité de tutelle avait, par cette faute administrative, condamné le comité de gestion provisoire dirigé par monsieur YUMBA MONGA à connaître d'énormes difficultés dans la gestion des affaires courantes de l'entreprise, si bien que cette situation fut davantage exacerbée par les instructions restrictives données par le Conseil Supérieur du Portefeuille, lesquelles limitaient au minimum les actes de gestion courante que les Comités de Gestion Provisoire installés dans les entreprises publiques devraient posés (cotes 14 à 15, dossier des pièces de preuve).

3) Contrairement aux accusations fantaisistes et de pure malice mises à charge de monsieur YUMBA MONGA, les négociations et la conclusion des contrats dits des marchés de travaux qui, selon le prescrit de la loi précitée, sont soumises aux autorisations préalables de l'autorité de tutelle ont été passées avant la nomination et la mise en place de son Comité de Gestion Provisoire à la tête de la GECAMINES.

4) C'est donc en vertu du principe de continuité des services publics et en exécution des instructions gouvernementales à caractère obligatoire contenues dans la lettre circulaire du 27 août 2001 portant fonctionnement du comité de gestion provisoire au sein des entreprises du Portefeuille de l'Etat que le comité de Monsieur YUMBA MONGA s'était engagé avec courage, responsabilité et en bon père de famille, à assurer le suivi des contrats conclus par ses prédécesseurs avec l'autorisation préalable de l'Etat congolais, propriétaire exclusif de la GECAMINES. Voilà pourquoi, nul ne peut en pareil cas lui en tenir rigueur.

5) S'agissant en particulier des contrats dits des marchés de travaux publics, il importe de bien savoir qu'aux termes de dispositions de l'article 41 de la loi précitée, les actes de dispositions, en l'occurrence les acquisitions et aliénations immobiliers, les marchés de travaux et fournitures dont le montant est égal ou supérieur à cent mille zaïres, les emprunts d'un an de terme, les prises et cessions de participation financière, l'établissement d'agences et bureaux, sont soumis à l'autorisation préalable de l'autorité de tutelle.

Ainsi qu'on peut le constater, l'autorité de tutelle a, en vertu de la loi et des principes généraux du droit administratif, un pouvoir illimité d'intervention en matière des contrats dits de marchés des travaux publics ou de fournitures de matériels. Ce faisant, elle a en matière de contrats dits de marchés des travaux publics non seulement le pouvoir de contrôle et de direction de l'exécution du contrat, le pouvoir de sanctions coercitives lorsque son cocontractant manque à ses obligations contractuelles, le pouvoir de modification unilatérales des clauses du contrat lorsqu'elles empêchent la continuité du service public, mais aussi et surtout le pouvoir de résiliation du contrat conclu.

Dès lors, il est manifeste que non seulement les exigences du service public destiné à apporter une tâche à la communauté font que le contrat dit des marchés de travaux fait du cocontractant un collaborateur plus ou moins direct de l'administration dans la poursuite d'une mission d'intérêt général, mais aussi l'autorité de tutelle a suffisamment des pouvoirs pour défendre et protéger les intérêts légitimes de l'Etat, lorsqu'ils se trouvent chaque fois menacés (Cotes 26 à 31, dossier des pièces de preuve).

3.4.- De l'absence totale des faits infractionnels dans le chef de Mr YUMBA MONGA.

De l'association des malfaiteurs autrement qualifiée par le rapport de l'O.N.U. de réseaux d'élite.

Aux termes du rapport final S/2002/1146 adressé au Secrétaire Général de l'O.N.U., le Groupe d'experts chargés d'enquête sur l'exploitation illégale des ressources naturelles et autres formes de richesse de la République Démocratique du Congo a mis à charge de Mr YUMBA MONGA des accusations non fondées selon lesquelles l'incriminé est membre du réseau d'élite opérant dans les territoires sous contrôle du Gouvernement de la R.D.C.

Le rapport susvisé ajoute qu'en vertu de sa qualité de Président d'alors du Comité de Gestion Provisoire de la GECAMINES, monsieur YUMBA MONGA, avait joué un rôle déterminant pour faciliter plusieurs opérations conjointes de pillage des ressources menées par la Société Minière d'Etat et par des entreprises privées.

Parlant du réseau d'élite, le rapport susvisé relève avec soin que le pillage qui, auparavant, était le fait des armées des Etats engagés dans la guerre du Congo était devenu l'affaire des groupes assimilables à des organisations criminelles représentées par trois types d'intervenants, en l'occurrence des hauts fonctionnaires congolais et zimbabwéens et des hommes d'affaires, lesquels ont échafaudé des systèmes organisés de détournement de fonds publics, de fraude fiscale, d'extorsion de fonds, des contrebande et de corruption.

A en croire le rapport précité, les personnalités les plus en vue de la branche congolaise de ce réseau sont le Ministre de la Sécurité Nationale, MWENZE KONGOLO qui est également actionnaire et sert d'intermédiaire pour des entreprises d'exploitations des diamants et de cobalt ; le Ministre de la Présidence et du Portefeuille, Augustin KATUMBA MWANKE, ancien employé de la société Minière Batewan en Afrique du Sud est un intermédiaire très influent pour les transactions minières et diplomatiques ; le Président de la Société diamantifère d'Etat, Société Minière de Bakwanga (MIBA) Jean Charles OKOTO ; le Minsitre du Plan et ancien Vice-ministre de la Défense, le Général Denis KALUME NUMBI, actionnaire au sein de la COSLEG et de la SENGAMINES, qui s'adonne au commerce lucratif des diamants ; le Directeur Général, YUMBA

MONGA, qui a joué un rôle déterminant pour faciliter plusieurs opérations conjointes de pillages des ressources menées par la Société Minière d'Etat et des entreprises privées.

Aussi bien, le rapport précise-t-il que non seulement les membres de ces réseaux agissent en coopération pour produire des revenus, mais aussi ils détournent les bénéfices financiers par le biais de diverses activités criminelles, en l'occurrence l'escroquerie, le détournement des fonds publics, la sous évaluation des produits, la contrebande, l'établissement des fausses factures, la fraude fiscale et la corruption.

Comme on peut s'en apercevoir, les faits mis à charge de Monsieur YUMBA MONGA, tels qu'ils sont sommairement exposés dans le rapport de l'O.N.U. et tels qu'ils viennent d'être largement explicités dans ce plaidoyer ne sont pas susceptibles de tomber sous le coup de l'association des malfaiteurs, infraction à la loi pénale reconnue et admise par le système juridique romano-germanique.

Puisque le rapport de l'O.N.U. mentionne avec soin que l'organisation criminelle qualifiée de réseau d'élite a été constituée pour atteindre les objectifs criminels suivants, à savoir le pillage des ressources naturelles, le détournement des fonds publics, la fraude fiscale, l'escroquerie, la contrebande, la corruption et l'extorsion des fonds publics, c'est qu'on peut logiquement en déduire que le réseau d'élite qui est une criminalité en groupe instituée pour attenter aux personnes et aux propriétés est assimilable en droit pénal congolais à l'association des malfaiteurs, infraction à la loi pénale prévue et punie par les dispositions de l'article 156 du code pénal congolais.

En tout état de cause, pour que cette infraction soit punissable, il faut nécessairement et bien évidemment que soient remplies cinq conditions préalables, à savoir :

1) Il doit y avoir une association, ce qui veut dire que des liens criminels doivent exister entre les divers membres.

2) Il faut en plus une organisation, ce qui implique non seulement une certaine permanence dangereuse, en raison de la menace durable qu'elle fait peser sur la société, mais aussi une convention tendant à faire un métier du vol et du pillage et à mettre en commun le produit des méfaits résultant de l'entreprise criminelle.

3) L'association doit avoir été formée dans le but d'attenter aux personnes et aux propriétés, ce qui implique un accord conscient et voulu sur tous les points dans une perspective criminelle.
   Sans doute aussi faut-il comprendre d'évidence que le but d'attenter aux personnes et aux propriétés demeure la raison sociale de l'association ou bien mieux sa véritable raison d'être.

4) Il faut retrouver dans le chef de chaque participant à l'entreprise l'intention criminelle, laquelle caractérise l'élément moral requis pour qu'une infraction à la loi pénale soit punissable.

5) Il faut au bout du compte prouver le préjudice pénal causé.

Mais à tous égards, pour être punissable, la participation à l'association criminelle doit sans nul doute possible être consciente et voulue par l'agent culpeux. C'est autant dire que connaissance et volonté criminelle de l'agent doivent porter non seulement sur l'association et sur

son existence, mais aussi sur son but. Car, en définitive, en ne sachant pas qu'on fait partie de la bande criminelle, il n'y a pas d'infraction d'association des malfaiteurs.

Tel est bien le cas de Monsieur YUMBA MONGA, membre du Comité de Gestion Provisoire d'alors de la GECAMINES, organe collectif d'exécution des actes de gestion courante et des décisions prises par le pouvoir hiérarchique de l'entreprise, qui est gratuitement accusé d'avoir coopéré avec le réseau d'élite opérant sur les territoires sous contrôle du gouvernement, sans qu'il ait connaissance ni volonté d'appartenir à cette bande criminelle.

Par ailleurs, on ne saurait trop nier cependant que les actes relevant de la gestion courante confiés à cet organe sont non seulement exécutés collectivement et non individuellement, mais aussi et surtout signés conjointement. C'est donc à tort et pour des raisons inavouées que les actes exécutés naguère par un organe collectif soient imputés à un membre individuel, fut-il président du comité de gestion (Cotes 38 à 44, dossier des pièces de preuve).

Voilà pourquoi, il a été jugé à cet égard que le fait de fournir des armes ou des instruments d'armes, de donner un logement ou un lieu de retrait à un membre de l'organisation individuellement, sans la connaissance de l'entreprise criminelle poursuivie par la bande, ne tombe pas sous le coup de la loi (Marchal et Jaspar, Droit Criminel, traité théorique et pratique, T.III, Maison Larcier, 1982, p.48).

Quoi qu'il en soit, il importe de bien noter que la condamnation à la sanction pénale d'une personne accusée d'une infraction ne saurait être rendue possible que si le demandeur à l'action publique rapporte au préalable la preuve non seulement de l'existence effective des éléments constitutifs de l'infraction à la loi pénale poursuivie ainsi que le préjudice pénal causé, mais aussi et surtout du caractère illicite du contrat dit des marchés publics à l'exécution duquel se greffe l'infraction ou les infractions poursuivies. C'est donc à ce prix et à ce prix seulement que la culpabilité de Monsieur YUMBA MONGA pourrait être envisagée.

Au demeurant, n'oublions cependant pas qu'aux termes des dispositions pertinentes de la déclaration universelle des Droits de l'Homme ratifiée d'ailleurs par la R.D.C., toute personne accusée d'une infraction à la loi pénale est présumée innocente des faits qui lui sont reprochés, tant que la preuve décisive et radicale de sa culpabilité n'aura pas été établie par une décision judiciaire définitive rendue par un tribunal compétent et impartial.

Fait à Kinshasa, le 31 mars 2003

Pour Monsieur YUMBA MONGA,
Son Conseil,
Maître ILUNGA LWANZA
Avocat

Reaction No. 47

UGANDA PEOPLES'DEFENCE FORCES
GENERAL HEADQUARTERS
P.O.BOX 313
BOMBO

29 May 2003.

The Secretary General
United Nations

Attention: The President
United Nations Security Council

REACTIONS TO FINDINGS IN THE FINAL REPORT OF THE PANEL OF EXPERTS ON THE ILLEGAL EXPLOITATION OF NATURAL RESOURCES AND OTHER FORMS OF WEALTH OF THE DEMOCRATIC REPUBLIC OF CONGO

I Major General James Kazini, Army Commander of the Uganda Peoples' Defence Forces of the Republic of Uganda, have decided to clear the air surrounding the allegations relating to my involvement in illegal activities relating to the illegal exploitation of the natural resources and other forms of wealth of the Democratic Republic of Congo.

CONTEXT

I am a serving officer of the Uganda Peoples' Defence Forces and currently, it's Army Commander. At the time of the activities which are alleged, I was the Commander of the UPDF forces in Congo.

As an army officer, I am a loyal Ugandan citizen committed to my country and required to obey the laws of my country. I am also duty bound to obey the commands of my superiors as by law established.

I am conscious of my duty as an army officer to follow the laws and customs of war as recognized by the law of Nations.

On occasion, obedience to national law and command may conflict with individual requirements under the internationally recognised laws of war. I have, as an officer, always put my obedience to law, legitimacy and legality at the forefront of my career.

The situation in Congo arose in the context of armed conflict, yet both United Nations Panels have failed to address the application of the laws of the war and the legitimacy of actions and decisions taken in the context of a situation of armed conflict and the rights and duties of a commander like myself. Economic activities in the context of war have to be seen from the perspective of the application of the laws of war. Having established the context, I will now proceed to answer the accusations one by one. I have examined the accusations leveled at me as a commander in the context of my rights and duties under the laws of war respecting

belligerent occupation, paying specific regard to the Hague Regulations Annexed to the Convention Respecting The Laws and Customs of War on Land of 18th October 1907.

THE FIRST PANEL REPORT (April 2001)

Involvement In Commerce (paragraph 28)
I have never involved my self in commercial activities. I have been a career soldier, while I have attempted to make a few investments for my family out of modest earnings, I have never been interested in carrying out business activities. I have served my country for more than twenty years. A visit to the registry of companies in Kampala will show that I have no companies in which I have shares. Pursuant to orders from the President, while the Commander of UPDF in Congo, I issued orders prohibiting any officers from engaging in commercial activities.

Mass scale looting and removal of products and chattels (Paragraph 34 and 35)
I have never been involved in such activities. While indisciplined soldiers may have involved themselves in such activities, I took steps, which are on record to discipline such soldiers and restore order.

Taxation and Administration
The Ugandan forces in Congo never carried out administrative duties as their mission as mandated by orders from our Government was to defend Uganda against threats based in Congo. The administration was the duty of the various belligerent Congolese forces that administered their country according to its laws. Taxation of the products and decisions relating to what they would tax was theirs. It is not necessary to point out that under the Hague Regulations, Articles 48 and 49 permit an occupant to levy taxes consistent with the laws made by the Government of the state whose territory is occupied.

In some cases as in the case of Madame Adele Lotsove, in Ituri Province, our duty was confined to supporting existing administration (the Panel report concedes that Madame Lotsove had been appointed by Mobutu and was continued in office by Kabila)

In some cases, our forces supported the Congolese belligerent administrations, to collect taxes and achieve their administrative tasks.

In ensuring law and order, our forces acted in accordance with international law. Article 43 of the Hague Regulations imposes a definite obligation on an occupying power to-

> "take all measures in his power to restore, and ensure as far as possible public order and safety, while respecting unless absolutely prevented, the laws in force in the country".

It would have been irresponsible to fail to maintain law and order and lead to chaos. The present crisis in Ituri province demonstrates this point. This point has to be understood not from a political point of view but from my factual and legal position of a commander of an army on foreign soil.

Innuendo and Speculation (para 89)
In many areas of the report, I have been described in various unflattering ways as "Master in the Field, orchestrator, organizer, and manager of illegal activities." Many of the accusations are not supported by any facts that show my actual involvement in a criminal act.

Training of rival militias
I have never ordered or authorized my sub-ordinate commanders to train rival militias in order to forment civil in strife in Congo. I am on record for disciplining many soldiers who breached military discipline.

THE ADDITIONAL REPORT (s/2001/1072)

Paragraph 99 speculates that I have shared money illegally gotten from tax revenues with Mr. Nyamwisi. I do not know about and have never collected or shared such revenues.

Trade between Congo and Uganda
Eastern Congo has always traded with Uganda and the East African region. This has been the case for hundreds of years. In addition to trade, there have always been close cultural ties accross borders. The speculation in paragraph 98 is, therefore, meaningless. There was no need to use any military power to ensure the importation of goods into a market where these goods are traditionally known and used. In any case an occupying power has to ensure the continuation of trade and commerce for the benefit of the population.

THE FINAL REPORT S/2002/1146

I have never been part of the Network described in paragraph 98. While I have associated with some of the individuals mentioned in the paragraph, during my duties as a government official in Uganda and Congo, I have no business relationships with any of them.

With regard to the findings of the Porter Commission (paragraph 136) referred to, the findings were based on erroneous assumptions. It was an attempt to address the conduct of a military commander without addressing both his position and rights under National Military Law and under the Law of Nations.

Regarding the mining (paragraphs 108 and 134) and transportation of coltan, I have never been involved in such activities. I have never been a shareholder, director or employee of Trinity Company or whatever it is. I have never exported such a commodity.

I would like to reiterate my continued willingness to cooperate with the Panel in its effort to establish the truth of the events in the Democratic Republic of Congo.

I remain yours sincerely

JAMES KAZINI
MAJOR GENERAL

Reaction No. 48



THE REPUBLIC OF UGANDA

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KAMPALA

28th May 2003

The Secretary General
United Nations

Attention: The President
United Nations Security Council

REACTIONS TO FINDINGS IN THE FINAL REPORT OF THE PANEL OF EXPERTS ON THE ILLEGAL EXPLOITATION OF NATURAL RESOURCES AND OTHER FORMS OF WEALTH OF THE DEMOCRATIC REPUBLIC OF CONGO

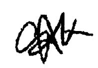
I Lieutenant General Caleb Akandwanaho Salim Saleh, would like to answer the allegations made against me by the three different Reports of the **Panel of Experts on the Illegal Exploitation of the Natural Resources and Other Forms of Wealth of the Democratic Republic of Congo.**

I have taken time to familiarize myself with the various allegations and I am pleased to respond as follows:-

INVOLVEMENT IN COMMERCE IN CONGO

I am a retired officer of the Uganda Peoples' Defence Forces, having retired in 1989. Since retiring from the armed forces, apart from a few political assignments by the Commander-in-Chief, in May 1996 up to December 1998, I have mostly led my life as a businessman involved in various sectors of Commerce.

The laws of the Republic of Uganda permit me to carry on business and live a normal life. Under the laws of Uganda, I was permitted to carry on business with other communities. I have found no specific limits which apply to me and do not affect other persons.



I will now address the following related issues:-

THE FIRST UN PANEL REPORT

Air Navette, (Paragraph 74)

I have never owned this Company or used it to deal with Mr. J.P. Bemba.

Victoria Group(Paragraph 80)

I have never been a member of this group or owned any interests in this Company.

Involvement Of UPDF Officers In Business (Paragraphs 88 and 89)

I have never involved any UPDF officers in the operations of any of the businesses I own.

THE ADDENDUM REPORT

Paragraph 99 of the report alleges that "Nyamwisi skims up to US $400,000 from taxes collected at Beni customs post and shares the money with General Kazini and General Salim Saleh." I have never shared any money with Nyamwisi neither have I ever done business with him.

FINAL REPORT

Elite Network (Paragraph 98)

I have never been a member of any criminal network. All my life I have always been a law-binding citizen. I have never associated with the persons named in criminal activities.

Front Companies (Paragraph 99)

My comments above on companies such as Trinity and Victoria Group apply to Sagrigof and La CONMET.

Paragraph 111

I have never owned a company called La CONMET and I have never sought or received any tax exemptions from Nyamwisi for the purpose mentioned.

Training Of Paramilitary Forces

While I have an interest in Saracen (U) Ltd in which I have shares, Saracen does its business in Uganda, It has no business in Eastern Congo. The Company and myself have never been involved in training any paramilitary forces. We have never been interested in destabilizing Congo or have a continuing foothold in the Country after the UPDF withdraws.

Counterfeit Currency And Diamond Smuggling
I have never been involved in trading in counterfeit currency. I have never smuggled diamonds from Congo or from any where else.

CAkandwanaho
CALEB AKANDWANAHO.SS
LT.GEN

Reaction No. 49

UGANDA PEOPLES' DEFENCE FORCES
GENERAL HEADQUARTERS
P.O.BOX 132
UGANDA.

28TH May 2003

The Secretary General
United Nations

Attention: The President
United Nations Security Council

REACTIONS TO FINDINGS IN THE FINAL REPORT OF THE PANEL OF EXPERTS ON THE ILLEGAL EXPLOITATION OF NATURAL RESOURCES AND OTHER FORMS OF WEALTH OF THE DEMOCRATIC REPUBLIC OF CONGO.

References:

A. RST/34/100/01 Dated 8th April 2003 and attached note by the President of the Security Council.

1. I am Col Burundi Nyamunywanisa, an Army Officer of the Uganda people's Defence Forces.

2. I am in receipt of a letter requiring me to react to the findings in the Final Report of the Panel of Experts on the Illegal Exploitation Of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo (herein after referred to as the "the Final Report").

3. In paragraph 108 of the Final Report, it is alleged as follows:-
   (a) that troops of the UPDF were engaged in providing protection to armed groups engaged in exploitation of coltan in Orientale Province of the Democratic Republic of Congo.

   (b) that I engaged in supervision of a number of coltan operations coordinated under the front company of Trinity Investment.

4. My response to the above allegations is as follows:
   (a) I was appointed by the Commander-in-Chief of the Uganda Peoples' Defence Forces as sector commander Beni and Lubero sector in August 1999 and I served as such for a period of 22 months.

(b) I was deployed in Beni and Lubero sector, not Orientale Province as alleged by the Report.

(c) My mission was to conduct operations against the Allied Democratic Front who had their bases in the area which they were using to airlift supplies from Sudan.

(d) No Officer or man of the UPDF under my command engaged in or was ever reported to me being involved in protection of alleged armed groups engaged in exploitation of coltan in Beni sector.

(e) I have never engaged in supervision of any coltan mining operations.

(f) Trinity Investment is not unknown to me. I first learnt of that company in the newspapers after my return from the Democratic Republic of Congo. Otherwise I had never heard of the same Company in my area of operation (Beni sector).

(g) I have never been involved in the any transaction or operation coordinated by a company called Trinity Investment.

(h) During my tours of duty in Beni sector of the Democratic Republic of Congo, I never participated in any business activity.

(i) During my tour of duty in Beni sector of the Democratic Republic of Congo, I never received any orders or instructions to coordinate, supervise or protect the activities of or relating to any company.

BURUNDI NYAMUNYWANISA
COL.

Reaction No. 50

UGANDA PEOPLES' DEFENCE FORCES
GENERAL HEADQUATERS
P.O.BOX 132 BOMBO
UGANDA.

28th May 2003

The Secretary General
United Nations

Attention: The President
United Nations Security Council

REACTIONS TO THE FINDINGS IN THE FINAL REPORT OF THE PANEL OF EXPERTS ON THE ILLEGAL EXPLOITATION OF NATURAL RESOURCES AND OTHER FORMS OF WEALTH OF THE DEMOCRATIC REPUBLIC OF THE CONGO.

References:

A. RST/34/100/01 dated 8th April 2003 and attached note by the President of the Security Council.

1. I am Col. Peter Kerim, an Army Officer of the Uganda Peoples' Defence Forces.

2. I am in receipt of a letter requiring me to react to the findings in the Final Report Of The Panel Of Experts on the Illegal Exploitation Of Natural Resources and Other Forms of Wealth of the Democratic Republic of Congo (herein after referred to as the "the Final Report").

3. In paragraph 98 of the Final Report, it is alleged that I am a member of an elite network engaged in exploitation of the natural resources and other forms of wealth of the Democratic Republic of Congo in areas of the Democratic Republic of Congo controlled by Uganda. My response to that allegation is as follows:-

(a) I am not a member of any sort of network allegedly engaged in exploitation of the natural resources and other forms of wealth of the Democratic Republic of Congo.

(b) I have no knowledge of the existence of the alleged elite network.

(c) I have never had any business relationship with any of the alleged members of the alleged network.

(d) Some of the members of the alleged elite network are only known to me as either my military superiors or fellow officers in the Uganda Peoples' Defence Force.

(e) During the period I was in the Democratic Republic of Congo, I was there on Official deployment by the Commander-in-Chief of the Uganda Peoples' Defence Forces. I was in the Democratic Republic of Congo for a period of one month and two weeks.

(f) I have never engaged in any business activity in the Democratic Republic of Congo.

4. In paragraph 116 of the Final Report, it is alleged that I was engaged in logging and fraudulent evacuation of wood from the Democratic Republic of Congo. My response to that allegation is as follows:-

a. I have never engaged in logging in the Democratic Republic of Congo or fraudulent evacuation of wood there from.

b. In any case logging is a major venture requiring heavy machinery and very substantial capitalization which I do not have.

c. I am only engaged in sawmilling in Lendu forest in Uganda in Nebbi District bordering with the Democratic Republic of Congo.

d. I have been conducting the business of sawmilling through a Company called Jaragi Enterprises Ltd incorporated in 1992.

e. Jaragi Enterprises has never engaged in logging outside Uganda.

f. I have no business relationships with Sam Engola or Col. Kahinda Otafiire.

g. The allegation of involvement in logging is not supported by any evidence and is mere speculation.

5. Other paragraphs in the Final Report outline alleged activities of the alleged elite network. I do not belong to any sort of network engaged in exploitation of natural resources and other forms of wealth of the Democratic Republic of Congo. The alleged activities of the alleged elite network are not relevant to me.

PETER KERIM
COL.

JOVIAL AKANDWANAHO (MRS)

P.O. Box 10508
KAMPALA
UGANDA
TEL: 077-794152

30th May 2003

The Secretary General
United Nations Organisation
NEW YORK.

Dear Sir,

RE: **FINAL REPORT OF THE PANEL OF EXPERTS ON THE ILLEGAL EXPLOITATION OF NATURAL RESOURCES AND OTHER FORMS OF WEALTH OF THE DEMOCRATIC REPUBLIC OF THE CONGO**

1. INTRODUCTION

Reference is made to the note by the President of the Security Council S/2003/340 of 24th March 2003, inviting individuals named in the Panel's last report under the Chairmanship of Mr. Mohmoud Kassem **(See Annex "A")**. As a person who was named and had unfounded allegations made against me in the report, I hereby give my reactions to those allegations and thank the security council for the opportunity.

wish to state from the onset that I am a law-abiding citizen of the Republic of Uganda, a professional businesswoman and property

399/1742/PK/003

manager. I conduct my business transparently, legally and on a fair commercial basis. I am involved in various companies conducting various businesses in Uganda and these companies are: - The Place Supermarket registered on 30th May 1994, Air Alexander International Ltd registered on 7th February 1994 and Ema Properties Ltd registered on 15th April, 2003.

2. ALLEGATIONS

The allegations against me are categorized into two, those contained in the report of the original panel, and those contained in the report of the reconstituted panel. However, the note from the President of the Security Council requires me to respond only to the allegations of the reconstituted panel. I shall restrict my response as such, but shall briefly highlight and provide evidence, where necessary in response to some of the allegations in the report of the original panel.

2.1 It is stated in Paragraph 107 of the final report of the reconstituted panel that, *"currently, Mr. Bouts aircraft share the flight times and destinations (slots) with Planet Air, which is owned by the wife of Lt. General Salim Saleh and which facilitates the activities of Mr. Bout by filing plans for his aircraft".*

2.2 In the report of the original panel, it was alleged that my role in the air transport, and in particular through Air Alexander International Limited, enhanced and increased the volume of exploitation of Congolese natural resources.

2.3 It is further alleged that I own Trinity Company and Victoria Group with my husband, Lt. Gen. Salim Saleh, which companies were allegedly involved in facilitating "our business activities" in the

exploitation of natural resources within the Democratic Republic of Congo.

2.4 That my diamond interest in Kisangani led to the clash between Uganda People's Defence Forces and Rwanda Patriotic Army.

3. RESPONSE

3.1 With regard to the allegation concerning Planet Air, I wish to state that it is true that I am the wife of Lt. General Salim Saleh but conducts my own separate business in Uganda. I wish to categorically state that I am neither a shareholder, director nor do I have any interest whatsoever in Planet Air.

Planet Air to the best of my knowledge is a company based in Kigali Rwanda and wish to state that I have no shares nor any interest in any company in Rwanda or Democratic Republic of Congo. The company in March 1999 entered into a contract with Air Alexander International Ltd, a company where I own 50% shares. This contract was for the management of the Boeing 707 (Registration 3D-WKU) using the licence of Air Alexander. Planet Air was responsible for among others handling of cargo while Air Alexander provided a licence with the permission of Civil Aviation Authority at a fee. This arrangement was purely contractual and was entered into for commercial considerations. Indeed as it turned out, the relationship was terminated after Planet Air failed to meet its financial and contractual obligations. **(See Letter of Demand from Air Alexander to Planet Air dated 19th January, 2000 marked "B").**

I wish to state further that I do not know the person called Victor Bout nor am I aware of any of his aircrafts sharing a slot with Air Alexander International.

I have not been shown any evidence which proves that currently Mr. Bout's aircraft shares a slot with any aircraft owned by myself and deny any involvement in the facilitation of his activities in any way. I repeat for emphasis that I do not know Mr. Bout nor am I aware of any of his business activities whatsoever and I strongly object and protest to the unjustified and grotesque accusations.

As you will appreciate, the panel, more than anyone else, knows that such accusations are indeed very grave accusations which could never be responsibly and lightly made except in the presence of evidence specifically demonstrating so.

3.2 In response to the allegations concerning Air Alexander International Limited and its role in the exploitation of Congolese natural resources, I wish to state as follows;

In October 1999 I bought Air Alexander from my husband Lt. Gen. Salim Saleh. **(See Memorandum and Articles of Association and Share Transfer Documents all marked "C")** The airline consisted of only one Bell Ranger three-seater helicopter. This aircraft never flew to DRC at all. It only did internal flights to Gulu. The airline was returned to Germany after its lease expired and to date, the airline has no aircraft and remains without a license. Possession of an aircraft is a precondition for licensing by Civil Aviation Authority.

We note with thanks that the reconstituted panel report disregards the above allegation contained in the original report.

3.3 With regard to the allegations concerning Victoria Group and Trinity Company, I wish to state that on learning of the allegations in the original panel report, I conducted a search on the Company register

and established that both Trinity Company and the Victoria Group are not known or registered as local or foreign companies in Uganda.

There is evidence that a company known as La Societe Victoria is registered in Goma and deals in diamonds, gold and coffee. **(See copies of the Memorandum and Articles of Association are attached hereto in proof of the above and marked "D").**

I have no interest whatsoever in La Societe Victoria, nor any company called Victoria Group be it as a shareholder, director, and business associate or in any other capacity. I wish to reiterate that the Panel has not furnished me with any document or other evidence to substantiate this allegation.

Khalil, mentioned in the report as being the owner of the Victoria Group, only had business interests with me in the form of a company called LEBAN (U) LTD which was running a Lebanese restaurant along Kampala Road in Kampala, Uganda, and which Lebanese Restaurant was sold off to other Lebanese after only a few months of operation **(See Memorandum and Articles of Association marked "E")**

The fact that I, at one time participated in business with Khalil does not necessarily mean that I am associated with him in all his other business ventures including the alleged diamond smuggling.

We note with thanks that the reconstituted panel report disregards the above allegation contained in the original report.

3.4 In reply to the allegations that my Diamond interest led to the Kisangani clash, I wish to affirm that I have never been to any part of the DRC

either on business or as a tourist or otherwise. **(See copy of my passport marked "F").** I have never dealt in diamonds in Kisangani or anywhere else. One wonders how a civilian, like my self, could cause a war between two national armies, the UPDF and the RPA just because of diamonds.

We note with thanks that the reconstituted panel report disregards the above allegation contained in the original report.

4. **OBSERVATIONS**

4.1 The methodology framework of the report is deceptive.

In paragraph 1.7 of the report the Panel states that it managed to collect well – substantiated and independently corroborated information from Multiple Sources. The Panel goes on to state that these knowledgeable sources provided documents and/or eyewitness observations. It then concludes that it is this type of information, consisting mostly of documentary evidence that the Panel has relied on its report. The Panel is now the investigator and the judge. Whereas I appreciate the duty of the panel to preserve it sources, the principles of Natural justice demand that the accused should know the full details of the case against him/her, in order to adequately and objectively respond. The accused in this case is however denied the opportunity to study, analyse and test the authenticity of the evidence on which the allegations are founded. This is not justice and fairness at all.

4.2 The alleged evidence against myself, if at all it exists, is baseless and unfounded and can best be categorised as hearsay.

4.3 Whereas, the Judicial Commission of Inquiry established by the Government of Uganda and recognized under Security Council

Resolution No.1457 has released its report, the findings of the Commission are a subject of further investigation and we are in the process of responding specifically to some of the allegations contained therein.

CONCLUSION

Before I take leave of this matter I wish to reaffirm my innocence and state that the allegations being leveled against me are false, malicious and ill motivated. There is no element of truth whatsoever and I challenge the panel to adduce the alleged documentary and other evidence, on which their conclusions are founded. The panel's policy of denying me the evidence, if at all there is any, not only offends the principles of natural justice and fair play but also goes against the very purpose for which the Security Council started this investigation.

The standard of proof is beyond reasonable doubt especially where allegations of such a grave magnitude are involved and particularly so where the panel recommends imposing travel bans and freezing of assets of an individual like myself.

I wish to reaffirm my innocence and my readiness to co-operate with the United Nations in any way possible as and when requested to do so.

With respect, I must state that the findings of the panel's report were inaccurate and I request the panel to consider the issues raised and evaluate the evidence provided in my response and clear me of the allegations.

I thank the Security Council for according me the opportunity to put the record straight and defend myself despite the fact that I have not been availed any evidence backing up the allegations.

Yours sincerely,

Jovial Akandwanaho

c.c. The Chairman,
Panel of Experts on Illegal Exploitation of
Natural Resources and other forms of Wealth
In the Democratic Republic of Congo

Reaction No. 52

MR. SPEAKER
Telephone: 700181/0
Telex: 24064 "ZIMPAR"
Fax: 708923
E-mail: parizim.gov.zw



PARLIAMENT OF ZIMBABWE
P.O. Box CY 298
Causeway
Zimbabwe

31 March 2003

President of the United Nations Security Council
United Nations Headquarters
New York, United States of America

RE: RESPONSE TO THE FINAL REPORT OF THE UNITED NATIONS PANEL OF EXPERTS ON THE ILLEGAL EXPLOITATION OF THE NATURAL RESOURCES AND OTHER FORMS OF WEALTH OF THE DEMOCRATIC REPUBLIC OF CONGO.

Mr President,

I have had sight of the Final Report of the United Nations (UN) Panel of Experts on the Illegal Exploitation of the Natural Resources and Other Forms of Wealth of the Democratic Republic of Congo (DRC) (S/2002/1146), tabled before the United Nations Security Council (UNSC) on 15 October 2002, wherein my name is mentioned.

I hereby formally submit my response to the allegations levelled against me in the said report.

Mr. President,

I served the Government of the Republic of Zimbabwe as Minister of State Security from 1980 to 1988 and as Minister of Justice, Legal and Parliamentary Affairs from 1988 to 2000. I have been serving as Speaker of Parliament from 2000 to date.

Mr. President,

In my capacity as Minister of Justice, Legal and Parliamentary Affairs, I was Co-Chairman of the Joint Zimbabwe and Democratic Republic of Congo (DRC) Ministers which dealt with cooperation in the war effort against aggression on the DRC by Uganda and Rwanda. The two Governments, i.e. Zimbabwe and the DRC, had agreed that each side would appoint a Steering Committee, headed by the two Ministers of

Justice, Legal and Parliamentary Affairs, deputised by the Ministers of Defence, to oversee the Campaign.

I served as Co-Chairman until the June 2000 Parliamentary Elections when I became Speaker.

Mr. President,

The allegation that I enjoy strong support from Senior Military and Intelligence officials for aggressive policies in the DRC conveniently omits to mention the fact that prior to my present post, I was the Minister of Justice, Legal and Parliamentary Affairs and consequently, played a leading role in the management of the DRC Campaign. I do not know on what basis the allegation has been made against me since there is no evidence adduced.

Mr. President,

On the second allegation that I am a key strategist for the Government Area elite network I, again, deny that. To my knowledge, there is nothing that exists. There is no evidence to adduce the veracity of the allegation.

Mr. President,

The allegation that a Mr. Al-Shanfari ordered ORYX employees to pay me commission from the proceeds of his money laundering, illegal forex deals and arbitrage operations, traced to Harare, Kinshasa, London and so on, is ludicrous. I deny that there was ever any discussion or arrangement for me to be paid Commission by anybody.

Mr. President, I respectfully submit the above response and hope that you will consider it with the fairness it deserves.

Yours sincerely

E. D. Mnangagwa
<u>SPEAKER OF PARLIAMENT</u>

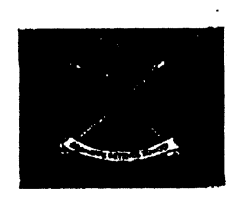
Reaction No. 53

All official communications should be addressed to the Commander Defence Forces

Telephone: 2512030/56; 251570/3
700077/8; 700155/8

Fax: 706661

Telegraphic address: DEFENCE HARARE



Reference:

MINISTRY OF DEFENCE
Private Bag 7713, Causeway
Harare
Zimbabwe

President of the UN Security Council
United Nations Headquarters
New York,
USA

23 May 2003

RESPONSE TO THE REPORT OF THE UNITED NATIONS PANEL OF EXPERTS ON THE ILLEGAL EXPLOITATION OF NATURAL RESOURCES AND OTHER FORMS OF WEALTH IN THE DEMOCRATIC REPUBLIC OF CONGO

Mr President,

I have read the Report of the United Nations Panel of Experts on the Illegal Exploitation of the Natural Resources and Other Forms of Wealth of the Democratic Republic of Congo(S/2002/1146), debated by the UN Security Council on 15 October 2002, in which certain allegations are leveled against me. I have also had sight of Security Council Resolution 1457(2003) adopted on 24 January 2003 which required me to respond to allegations leveled against me in the Panel of Experts Report(S/2002/1146).

Mr President,

I, General V.M.G. Zvinavashe, am the Commander Zimbabwe Defence Forces(ZDF). I have been the Commander ZDF since the time before the DRC conflict which erupted in August 1998 up to date. During the DRC conflict from 1998 up to the time of the withdrawal of Foreign Forces from the DRC, I was the General Officer Commanding the entire SADC Allied war effort and answerable to the Collective Forum of the SADC Allied Heads of State and Government of Angola, DRC, Namibia and Zimbabwe, regarding military aspects of the campaign in defence of the DRC against aggression. As such, I provided the interface between the military and the Political Authorities.

Mr President,

The success of our military Campaign in the DRC rested on three mutually interdependent pillars of control. At the apex sat the political direction of

the war, as represented by Heads of State and their Cabinets. At the bottom of the triangle, on one side, sat the operational level which actually orchestrated the campaign. On the remaining side sat the sustainment of the war effort, encompassing all the logistics, finance, personnel and related resources requirements. It is common knowledge that in any war, the final aspect exerts Governments to the limit. The Governments of the DRC and Zimbabwe agreed, from the outset, to set up a management structure that was charged with overseeing that the three aspects worked in unison for the strategic goal of sustaining the war effort.

Mr President,

The DRC and Zimbabwe Governments appointed a Joint Committee of Ministers to oversee the Campaign. I sat on this Committee in my capacity as General Officer Commanding the SADC Allied war effort. It was this Committee where the idea of joint economic ventures, was initiated for the purpose of the DRC to use its own national resources to be able to sustain the protracted defensive war effort against invasion by Burundi, Rwanda and Uganda as well as to be able to repair our besieged economies. Our Governments entered into a Memorandum of Understanding on Military and Economic Cooperation. Among the key operative provisions of the MOU was a requirement for the establishment of an Implementation Committee charged with oversight of the joint ventures.

Mr President,

The allegations that I hold direct shares in joint ventures are immaterial. If the Panel of Experts had examined the relevant statutes in the DRC, they would have discovered that Congolese law required a minimum of seven directors to register a SARL(Public) company. This explains why officials would be listed as nominal shareholders on the articles of association, hence the 0000+ share that is attributed to at least two individual nominees on either side in all joint ventures.

Mr President,

I don't see it worthwhile to comment on the Panel's labeling me as a "key ally of the Speaker" and one whose family is engaged in "diamond trading and supply contracts in the DRC" as I see this as an attempt to rub home the Panel's stereotype of military led high level corruption, criminality and cronyism in Zimbabwe. The Panel deliberately launders from its evidence and fails to tell that I am an established businessman, providing transports and even schools in Zimbabwe

Mr President, Based on the foregoing I submit my denial of allegations leveled against me. I also request that the distortion in the Panel's report concerning my role in the DRC/Zimbabwe Joint Economic activities be corrected.

Yours sincerely,

V.M.G. ZVINAVASHE
GENERAL

Reaction No. 54

All official communications should be addressed to the Commander Defence Forces

Telephone: 2512030/56; 251570/3 700077/8; 700155/8

Fax: 706661

Telegraphic address: DEFENCE HARARE



Reference:

MINISTRY OF DEFENCE
Private Bag 7713, Causeway
Harare
Zimbabwe

President of the United Nations Security Council
United Nations Headquarters
New York
USA

24 May 2003

RESPONSE TO THE REPORT OF THE UNITED NATIONS PANEL OF EXPERTS ON THE ILLEGAL EXPLOITATION OF NATURAL RESOURCES AND OTHER FORMS OF WEALTH IN THE DEMOCRATIC REPUBLIC OF CONGO

MR PRESIDENT

I Brigadier General Sibusiso Moyo present compliments to the UN Security Council and have the honour to respond to allegations leveled against me in the final report of the United Nations (UN) Panel of Experts on Illegal Exploitation of the Natural Resources and other forms of Wealth of the DRC/5/20022/1146 tabled before the United Nations Security Council on 15 October 2002 and the resulting UNSC Resolution 1457 (2003) adopted on 24 Jan 2003.

I confirm that I am still serving and am a career military officer having hailed from a promising military background. The following are some of the highlights of my career:

a. Regimental officer.

b. Directing staff at the Military Academy and the Zimbabwe Staff College.

c. Director of Operations Planning at Army HQ.

d. Command a Brigade in the Mozambique Campaign (1983-1989).

e. Served with UNOSOM II in Somalia as Chief Military Personnel Officer.

f. Commandant of the Zimbabwe Military Academy.

g. Commander of Exercise Blue Hungwe, the first SADC UN Peace Support training Exercise(1986).

From the Zimbabwe Defence Forces Headquarters

h. Was Chief Umpire of the second and last SADC UN Peace Support Ex Blue Crane in South Africa(2000).

i. Was Appointed Brigadier Administration and Finance at Army HQ. An appointment I held until I was appointed Senior Advisor to Commander Zimbabwe Defence Forces at the commencement of the DRC Campaign, the post I hold to date.

Mr President,

It is against the above background that all activities or functions I performed were directly for and in my officially assigned responsibility by my Government and not as a member of any network.

There was therefore no Criminal Act nor intent on my part as the panel report would want to portray. I deny the allegations leveled against me and wish to correct the misrepresentation by the Panel of Experts regarding my role in the DRC/Zimbabwe Joint Ventures implementation.

Mr President,

I acted in my official capacity as tasked by my Government to execute the objectives of the Joint Zimbabwe/DRC Governments' Memorandum of Understanding on Military and Economic Co-operation. The Joint economic ventures between the two sovereign states and legitimate Governments were part of efforts to procure necessary resources required for the Defence of the Sovereignty of the DRC. The joint ventures were created in terms of the Laws of the DRC and were not illegal activities.

Mr President,

As the Co-ordinator of the implementation of the DRC/Zimbabwe agreement, I made several contacts within and outside the DRC in the course of my duties. It was therefore not criminal for me to be seen introducing new and potential investors to the DRC Government. This was intended to give them confidence to invest in the country for the benefit of the DRC Government in order to generate resources for a legitimate cause to defend the country against naked aggression.

Mr President, I sincerely and respectfully submit the above response and hope that you will consider retraction of allegations of any wrong doing on my part.

Yours sincerely

S.B. Moyo
Brigadier General

Reaction No. 55

United Nations S/2002/1221



Security Council

Distr.: General
4 November 2002

Original: English

Letter dated 4 November 2002 from the Permanent Representative of Uganda to the United Nations addressed to the President of the Security Council

On instructions from my Government, I have the honour to transmit a response, dated 1 November 2002, by the Government of Uganda on the final report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo (see annex).

I should be grateful if the present letter and its annex could be circulated as a document of the Security Council.

(*Signed*) Matia Mulumba **Semakula Kiwanuka**
Ambassador Extraordinary and Plenipotentiary
Permanent Representative

Annex to the letter dated 4 November 2002 from the Permanent Representative of Uganda to the United Nations addressed to the President of the Security Council

The response by the Government of the Republic of Uganda to the final report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo

Contents

I: INTRODUCTION

1. On request of the UN Security Council on 2 June 2000, the Secretary General of the UN established the 1st UN Panel on the Illegal Exploitation of the Natural Resources and other forms of Wealth in the DRC, chaired by Mme Ba N'Daw of Ivory Coast. The UN Security Council discussed the report of the UN Panel, which accused Uganda of involvement in the illegal exploitation of the natural resources of the DRC on 3 May 2001. The Security Council agreed with the presentation by Uganda (S/2001/458) that the Mme Ba N'Daw report was based on hearsay and lacked corroborative evidence to back its conclusions and recommendations. It welcomed the decision by Uganda to set up an independent Judicial Commission of Inquiry into the allegations of illegal exploitation of the natural resources of the DRC.

2. The UN Security Council mandated the 2nd UN Panel chaired by Ambassador Kassem (Egypt) to prepare an addendum to the report containing, inter alia, a more in-depth analysis based, **as far as possible on corroborated evidence on allegations and conclusions raised and to the comments and reactions of states and actors cited in the report of the panel.** The Addendum report of December 2001 acknowledged Uganda's legitimate security concerns in the DRC and concluded that neither the Uganda government nor its companies were involved in the illegal exploitation of natural resources in the DRC. The Addendum report and Uganda's response (document S/2001/1163) were discussed in the UN Security Council on 14 December 2001.

3. The UN Security Council requested the UN Secretary General to renew the mandate of the Kassem Panel to prepare a report that would include, inter-alia:

(a) An update of relevant data and analysis of further information from relevant countries, including in particular from those countries that had not provided the UN Panel with requested information.

(b) An evaluation of the possible actions that could be taken by the Council in order to help bring to an end the plundering of natural resources of the DRC, taking into account the impact of such actions on the financing of the conflict and potential impact on the humanitarian and economic situation of the DRC.

(c) Recommendations on specific actions that the international community, in support of the Government of the DRC, might take, working through existing international organizations mechanism and the UN bodies, to address the issues in the report and its addendum.

(d) Recommendations on possible steps that might be taken by transit countries as well as end users to contribute to ending illegal exploitation of the natural resources of the DRC.

4. The UN Security Council also urged Governments named in the previous reports to conduct their own inquiries and to cooperate fully with the UN Panel.

5. The UN Panel chaired by Ambassador[1] Kassem visited Uganda from 3rd-6th March 2002, and was given maximum cooperation by government. The Panel met Hon. E. Kategaya, 1st Deputy Prime Minister/Minister of Internal Affairs; Hon. Amama Mbabazi, Minister of Defense; Hon. tom Butime, Minister of State for Foreign Affairs; Hon. Muruli Mukasa, Minister of State for Security; the Directors general of the External and Internal Security Organisations; and a group of technical officials. The Panel also held meetings with member of the Porter Commission. Subsequently, the Porter Commission and the Kassem Panel exchanged information and visits.

[1] Other members of the Panel included: Mr Jim Freedman (Canada); Mr. Mel Holt (USA); Mr. Bruno Schiemsky (Belgium); Mr. Moustapha Tall (Senegal); Mr. Gilbert Barthe (Switzerland - Technical Advisor); Ms. Elodie Cantier-Aristide (France – Political Assistant); and Ms. Hannah Taylor (USA – Political Assistant).

Key Elements of the Response to the Final Report of the UN Panel

6. The response of the Government of the Republic of Uganda to the Final Report as contained in the document covers the following chapters:

- Introduction: background to the Final Report of the UN Panel.
- The positive aspects and flaws of the Final Report.
- Response to allegations against the Government of Uganda/UPDF.
- Response to allegations against Ugandan individuals and companies.
- Comments by the Uganda Government on the observation, conclusion and recommendations of the UN Panel.
- Recommendations by Uganda on the way forward.

II. POSITIVE ASPECTS OF THE FINAL REPORT

7. As pointed out in the press statement of 23 October 2002, (S/2002/1202), the Government of Uganda noted that the Final report of the UN Panel contains a number of positive elements, which are:

- A more balanced scope of investigation covering, inter-alia, the end-user countries outside Africa and strong support for the building of state institutions, capable of administering the natural resources and territorial sovereignty of the DRC.

- Recognition of the fact that the Republic of Uganda established the Porter Judicial Commission of Inquiry[2] as an internal mechanism to address the allegations of illegal exploitation of the natural resources of the DRC, in accordance with the UN Security Council recommendations of 4 May and 19 December 2001. The UN Panel also made a positive effort to cooperate and share information with the Porter Commission, in spite of the marked differences between the Panel and Commission on methods of investigation.

- **Confirmation of the fact that neither the Uganda Government nor any of its companies are involved in the illegal exploitation of the natural resources of the DRC.** Indeed, the Addendum Report of the UN Panel (November 2001), concluded that Uganda's involvement in the DRC was based on (a) a bilateral protocol between Kampala and Kinshasa of 26 April 1998 and (b) the legitimate security concerns emanating from the threat posed by the negative forces operating in Eastern DRC, i.e., the ADF, WNBF, UNRF II and the more recently formed PRA.

- **Sharing the view by Uganda that an embargo or moratorium on exports of natural resources from the DRC 'would not be a viable means of helping the situation of the Country's Government, citizens or the natural environment'.** As Uganda stated in the Response to the Addendum Report (S/2001/1163), such a moratorium would not only be difficult to enforce, but would hugely hurt the Congolese small-scale farmers and artisan miners whose livelihood entirely depends on earnings from the traditional cross-border trade.

- **By covering the end-user countries, the Final Report brought in the missing link and improved the scope of investigation to cover all parties involved in the DRC.** Indeed, a deeper historical analysis of the companies and criminal organisations based outside Africa would definitely help us to understand the failure to build viable state institutions and structures in the DRC since the era of King Leopold II of Belgium.

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[2] Terms of reference for the Porter Commission, contained in Legal Notice No. 5/2001 of 5 May 2001, are reflected in UNSC document S/2001/1163.

- **Recognising the importance and centrality of the urgent implementation of the Lusaka Ceasefire Agreement including the DDRRR, withdrawal of foreign forces, and the establishment of an all-inclusive transitional Government in Kinshasa.** It underscores the fact that the establishment of a new and stable political dispensation which has the necessary state institutions and structures for administering the territory is the only guarantee to (a) guarding against any illegal exploitation by local or international criminal organisations, (b) ensuring that the territory of DRC does not harbour terrorist groups against regional neighbours.

- **Focus of the recommendations in the Final Report on creating conditions and incentives for (a) encouraging all parties to implement their obligations in the Lusaka Ceasefire Agreement, the related Pretoria and Luanda Agreements as well as the Sun City resolutions,** (b) deepening regional integration, (c) strong international financial support for building state institutions in the DRC, (d) post-conflict reconstruction in the DRC and regional neighours, (e) deterring international organised crime syndicates from continued illegal activites in the DRC.

III. MAJOR FLAWS IN THE FINAL REPORT

Downplaying Uganda's Security Concerns in Eastern DRC

8. **Unlike the Addendum Report of November 2001, the Final Report completely ignores Uganda's legitimate security concerns** as recognised in the Lusaka Ceasefire Agreement (1999), the relevant UN Security Council resolutions and the Uganda/DRC Bilateral Agreement of 6 September 2002 in Luanda, Angola.

9. **Uganda got involved in the DRC as a result of the genuine security concerns.** These included the operations of the terrorist groups including ADF, WNBF, UNRF II, NALU, the recently-established PRA and other negative forces such as the genocidal Ex-FAR and the Interahamwe. These groups have used the territory of the DRC to launch persistent and indiscriminate terrorist attacks on the people of Uganda. Examples include the grisly Mpondwe (1996), Kichwamba (1998) and Bwindi terrorist massacres in Uganda (1999). Persistent Interahamwe attacks in Kisoro District continue. A bilateral protocol between Uganda and the DRC of April 1998 allowed the Uganda People Defence Forces (UPDF) to pursue the terrorist groups.

Application of an Invalid Hypothesis to Uganda

10. **The concept or hypothesis of the alleged 'elite networks',** which are claimed to have curved out separate self-financing areas and are responsible for the continuation of micro-conflicts over natural resources and revenues in the DRC is **fundamentally flawed and invalid in the case of Uganda.** A simple SWOT/test analysis reveals that the basic assumptions of the hypothesis are wrong, the evidence of the existence of Ugandan 'elite networks' is untenable and the motive of the hypothesis is ill intentioned. For example:

- The hypothesis makes the wrong assumption that RCD-K/ML and MLC are "mere facades" and "militias" in the so-called 'Ugandan controlled area'. Uganda has since May 2001 withdrawn from the DRC, except for one battalion in Bunia at the request of the UN Secretary-General. Uganda is committed to complete withdrawal under the Lusaka Ceasefire and the Luanda Agreements. MLC and RCD-ML are effectively responsible for administration, economic management and justice in their respective areas of control as recognised under the Lusaka Ceasefire Agreement and by the UN Security Council.

- The UN Panel does not appear to be cognisant of the history of the DRC since the King Leopold II era including the fact that Uganda has been a victim of repeated terrorist attacks from DRC territory.

- The evidence adduced by the UN Panel does not establish the existence of a link between the Ugandan actors cited and any 'elite network' in the so-called 'Ugandan controlled area'.

- The UN Panel seems to have been at pains to find any evidence/data that would serve the purpose of down playing Uganda's security concerns and demonising or tarnishing the image of Uganda.

Methodology

11. The composition of the UN Panel and their method of investigation do not demonstrate capacity to sift through deliberate falsehoods, war propaganda and political intrigue involved in the conflict in the DRC. In a conflict situation like in the DRC, information from walk-ins, motivated volunteers and traditional enemies (e.g., Lendu/Hema) requires a higher level of proof and corroboration than was apparently applied by the UN Panel. People can only achieve this with the expert knowledge about the history and the cultural complexity of the inter-linked conflicts in the Great Lakes Region. It is also unprofessional and dishonest to extrapolate data from surveys from one region in the vast DRC to meaningfully interpret a serious humanitarian situation in another area (Para 131). Clarifying the alleged UPDF negative motive in Bunia, the UN Panel bases on (Para 123) the claim by RCD K/ML department chiefs – who are Lendu allied chiefs – that the Hema businessmen interests in controlling gold deposits in Geti was the underlying cause of ethnic conflict in Bunia, yet history shows that neither the Hema, nor the Lendu, have any kind words for each other.

Poor Corroboration of Evidence

12. The UN Panel asserts in paragraphs 7 & 8 that it relied on well substantiated and independently corroborated evidence by documents and eye-witnesses and that the Panel operated under a reasonable standard of proof with fairness and objectivity. Unfortunately, the Final Report still contains statements with serious factual errors, un-corroborated information, contradictions and clear distortions. For example:-

- The UN Panel alleges that a Protocol d'Accord was signed on 22 February 2002 between RCD-K/ML leadership and Col. Mayombo on behalf of Uganda Government whereby UPDF was promised a monthly stipend of $25,000 and exemption of Ugandan companies from duties and import tax. The alleged Protocol d'Accord does not exist (Para 122).

- The Panel misrepresents the mandate of the Porter Commission of Inquiry with regard to the scope of investigation on army officers, and its relationship with the Minister of Foreign Affairs and the President. The truth of the matter is that the Porter Commission has the judicial powers of the High Court and is independent of the Executive. As a consequence, the Commission has the powers to subpoena witnesses, documents and cause audits (Para 137).

- The report in Para 116 refers to 'Parliamentarian' Sam Engola. Mr. Engola, who is a Ugandan businessman, has never been a member of any Uganda Parliament.

- The Panel makes rather contradictory observations in their analysis and evaluation of the evidence they relied upon and their collaboration with the Porter Commission as regards the general principles in handling criminal allegations. The Panel does not seem to consider caution of authenticity of sources of information, which are not subject to scrutiny. They do not appear to consider the gravity of indicting people, governments and companies on evidence that may be forged or false.

IV. ALLEGATIONS AGAINST GOVERNMENT OF UGANDA/UPDF

13. The UN Panel makes a number of uncorroborated allegations against the Uganda Government/UPDF.

14. **False Allegation 1. That the UPDF presence in the Eastern DRC is the cause of the instability designed to create conditions for the continued illegal exploitation of resources of the DRC. For example:-**

Para 12… Criminal groups linked to the armies of... Uganda... [Among other countries]…

Para 14 The Uganda Peoples' Defense Forces continue to provoke ethnic conflicts, as in the past, clearly cognisant that the unrest in Ituri will require the continued presence of a minimum presence of UPDF personnel.

Para 101 UPDF and their associated rebel militias have been used as the de facto enforcement arm of the network.

Para 102 in anticipation of this withdrawal a paramilitary force is being trained under Lt. Gen. Saleh, which according to the panel's sources is expected to continue to facilitate the commercial activities of UPDF officers after UPDF has left.

15. **Response**

- The UPDF is a national army with no official or un-official links with any criminal groups. It is unfair to make such an allegation against the institution of the UPDF without naming the criminal groups.

- The UPDF remains in the DRC at the request of the UN Secretary General in his letter of 4th May 2001 as a stabilising force in Bunia in support of the Lusaka Ceasefire Agreement. The Secretary-General requested the withdrawal of UPDF in the context of the disengagement process.

- Uganda has signed bilateral agreements with the DRC such as the Luanda Agreement of 6 September 2002 on the total withdrawal of UPDF and the Ituri Pacification Commission.

- The Hema/Lendu conflict is historical and was triggered off by a fight for land. The late Mobutu compounded it when he took sides with the Hema against the Lendu by giving them land. The UPDF, therefore, did not create this conflict. Facts on the ground clearly demonstrate that the security situation in all the other areas where the UPDF withdrew such as Gbadolite, Gamena, Buta, Beni, etc., there is relative peace. Many of these areas have more natural resources and population than Bunia, where there has been persistent Hema/Lendu ethnic conflict over land.

- The UN Security Council will recall that Uganda has on various occasions appealed for the deployment of a sufficient MONUC force to take care of law and order in Ituri so that UPDF withdraws but MONUC has not been able to do so. Uganda is committed to the total withdrawal of UPDF from Bunia in 100 days from the D-day of 6 September 2002 as stipulated in the Luanda Agreement.

16. **False allegation 2: False allegation that UPDF is maintaining local militias in Eastern DRC to protect the elite network.**

Para 101… The Uganda Peoples' Defence Forces and their associated rebel militias have been used as the de facto enforcement arm of the network, ensuring the network's pre-eminent commercial position through intimidation and threat and use of force…

Para 108… Coltan has been exploited extensively in Orientale Province by various armed groups under the protection of UPDF…. Armed groups frequently identified with militias under the command of UPDF officers manage site in remote locations where diggers pay a daily fee to exploit an area.

17. **Response**

- The Uganda government through UPDF has never trained any personal militias. The Government of Uganda trained armies on behalf of their allies, namely MLC and RCD-K/ML. The troops trained and put in the hands of MLC

continue to provide effective security and administration in the area under MLC control. Unfortunately RCD-ML/K has suffered numerous divisions in its leadership. As a result some of the troops are under Mbusa Nyamwisi in the Beni-Butembo area of North Kivu. The other group is under the former Defence Minister of RCD-ML, Tom Lubanga in parts of Ituri, who has since formed a political group called Union of Patriotic Congolese (UPC). The confusion in the final report arises from the UN Panel's failure to understand this historic background.

- This specific inference to UPDF as running militia groups and that it operates through intimidation is totally untrue. UPDF operates on a strict code of conduct, and where individual officers have misbehaved and there is implicating evidence they have always faced the law.

- The Army Statute 1989, the UPDF Code of Conduct, etc. and more recently the Porter Commission are a good testimony how UPDF cannot condone such acts as stated above. The government of the Republic of Uganda reiterates its position that, it is committed to the implementation of the Porter Commission recommendations.

- What logic is in an argument that armed groups are protected by UPDF? If the groups were armed would they need any protection, and protected from who and what! Why did the UN Panel not name these groups?

18. **False Allegation 3: That UPDF officers have been involved in extorting taxes from Congolese.**

Para. 115 But increased profit margins from tax-free imports provide only a fraction of the tax-free benefits. Equally lucrative is access to the taxes themselves monopolized by the network that uses the rebels' administration façade...

19. **Response**

- The details of this information, e.g., which units and officers involved should have been availed for scrutiny otherwise the claim remains a mere hearsay.

- This claim is false as it pretends that there are no rebel groups in the areas mentioned in the Eastern DRC. Both Lusaka and other agreements have recognised the different rebel actors, whose origin can be traced from failure by the Kinshasa administration to exercise effective leadership in the area.

- Uganda believes that the war situation, which was provoked by failure of Kinshasa to extend leadership into these places, leading to the presence of marauding ADF rebels and more recently PRA elements and other negative forces in the DRC are the real problem behind the criminality in the Eastern DRC.

20. **Allegation 4: That UPDF has been involved in stealing cattle and forcing the locals to give them hides.**

Para 117...The representative of Food and Agriculture Organisation of the United Nations in Bunia has reported the more recent UPDF practice of offering protection to ranches against attacks they themselves have orchestrated.

Para 122... UPDF have created the conditions that require the presence of troops and their continued involvement in the commercial operations. This has entailed giving arms to both sides in the ethnic conflict, the Lendu and the Hema. The consequent increase in ethnic fighting has resulted in the UPDF being urged to assist in furthering the peace process in Bunia.

....This function was formalised in an official protocol d'Accord signed on 22 February 2002 by Mbusa and John Tibasiima as the President and Vice President of the RCD-K/ML and Col. Mayombo as the official representative of the Government of Uganda...

Para 124...UPDF military operations have contributed to the arming of large numbers. UPDF have trained the militia of their Ituri commercial allies...

21. **Response**

- The allegation that UPDF is involved in stealing of cattle in Bunia is false. However, if individuals have been involved, the Panel should be able to give the number of cattle stolen, and the officers involved and from which units these officers came for necessary disciplinary action by Government.

- The alleged statement of proof about Col. Mayombo signing a document as an official representative of Uganda Government is not only untrue but also seems to be consistent with the falsehood the Panel decided to swallow. The Panel had a chance to meet Mayombo but could not raise a question about the claim to him. This method of doing work casts doubt on the transparency of the Panel in gathering information.

- Apart from it being a lie, it creates an impression that UPDF units in the DRC could depend on $25,000 a month. It is ridiculous to state that UPDF depends on $25,000 to stay in the DRC.

22. **Allegation 5: Paras. 102, 103, 121, 122 contain a muddled analysis of the power play in Eastern DRC resulting into some important conclusion:**

That Lt. Gen. Saleh is training private militia... made up of RCD, Congo. That UPDF officers are intent on breaking up MLC in order to boost members from RCD-Congo. That there is an attempt to replace Mbusa Nyamwisi with Roger Lumbala of RCD Nationale. Thomas Lubanga is replacing Mbusa Nyamwisi in Ituri, etc.

23. **Response**

- RCD Congo is a splinter group from RCD Goma and is allied to Kinshasa government following the Sun City Agreement and is therefore not anybody's personal militia.

- Roger Lumbala of RCD Nationale is allied to MLC of Jean Pierre Bemba. RCD Nationale has been in conflict with RCD K/ML. So its leader is not being groomed by any party to replace Mbusa Nyamwisi.

- There is no evidence adduced to suggest that UPDF officers are in the process of undermining Bemba, to bring about his downfall.

- RCD K/ML is allied to the Kinshasa government and has been receiving military and other support from the Kinshasa government.

- RCD K/ML has been arming and training the Lendu against the Hema in Ituri region. So Hema elements within RCD K/ML have consequently deserted to form the UPC under former RCD K/ML Defence Minister Thomas Lubanga.

- The UPC has sought alternative sources of arms citing refusal of UPDF to arm them.

- The Hema/Lendu conflict is historical and is about land. It is there not as a result of arrival of UPDF in Ituri.

- Ituri is not the most resource rich area where UPDF has been in Congo. The other areas vacated by UPDF are devoid of ethnic strife. That UPDF is fanning ethnic conflict to maintain criminal elite networks is therefore preposterous.

24. **Allegation 6: That 165 children between 14-16 years of age were recruited and trained at a UPDF military camp at Kyankwanzi in Uganda (Para 129).**

25. **Response**

Kyankwanzi is a National Leadership Institute and not a military training camp. The children were rescued from a mutiny by Mbusa Nyamwisi and John Tibasiima against the leadership of RCD-K under Prof. Wamba dia Wamba in Bunia and taken to the Kyankwanzi leadership institute for care and counselling in 2001. The children were subsequently handed over to UNICEF Uganda and the Red Cross, which in turn put the children under the care of World Vision at Kiryandongo in Uganda. UNICEF Kinshasa arranged to receive and re-unite the children with families after the conflict had eased. The unspecified numbers of recruits being trained in unstated location for the extremist Hema militia, 60% of who are supposed to be under 18, have nothing to do with Uganda.

V. ALLEGATIONS AGAINST UGANDAN MILITARY OFFICERS AND OTHER INDIVIDUALS

26. The Government of Uganda has noted with concern the allegations of continued involvement of Uganda military officers and businessmen in the illegal exploitation of natural resources, diversion of taxes and other revenue generation activities in Eastern DRC.

27. The Government of Uganda established the Judicial Commission of Inquiry into the Illegal Exploitation of Natural Resources of the DRC, May 2001, under the chairmanship of Justice Porter (UK). Other members of the Commission are Justice Berko (Ghana) and Mr. John Rwambuya, a retired Ugandan Senior UN Civil Servant (official). The Porter Commission has cooperated with the UN Panel on a number of source material/evidence.

28. It should be noted that the final Porter Commission Report will be released soon. The Government of Uganda reiterates its commitment to the implementation of the recommendations of the Report. The government of Uganda will, therefore, await the release of the Porter Commission Report, before making any comments on the allegations against specific Ugandan senior military officers and business people.

Individual Liability Vs Official Liability

29. However, we feel that there is need to comment on the issues where official liability and individual liability have been mixed up. It is not clear from the UN Panel Report to discern allegations of illegality/illicit activities of the individual UPDF officers done in personal capacity from those activities considered illegal/illicit committed while acting in official capacity. For example:

(a) In Para 102 the Report alleges that in anticipation of the withdrawal from DRC by UPDF, a paramilitary force is being trained by Lt. Gen. Saleh which is being prepared to continue to facilitate the commercial activities of UPDF officers after UPDF has departed from the DRC.

Comment:

- As a matter of policy and law, Uganda government does not allow, encourage, or condone the establishment of personal armies. In this context, it is important to note that the alleged personal para-military force does not exist as explained in paragraph above.

(b) In Para 122 – the Panel claims that in order for UPDF to formalise the condition for its continued presence, Col. Mayombo (CMI) signed a protocol of Accord with RCD/ML as an official representative of the Government, for a monthly stipend of $25,000 and all Uganda enterprises approved by UPDF would be exonerated all duties and taxes.

Comment:

- The alleged Accord does not exist in government records.
- Col. Mayombo as chief of Intelligence had opportunity to meet the Panel, and if this Accord existed, the issue should have been raised with him or government of Uganda in order to provide a fair hearing, as required by the Panel's mandate (S/PRST/2001/13).

VI. OBSERVATIONS AND CONCLUSIONS OF THE UN PANEL OF EXPERTS

30. The Uganda Government agrees with the following observations of the UN Panel of Experts:

(a) That the situation in the DRC is a consequence of the lack of a central government with the authority and capacity to protect its citizens and resources (Para 149). However, it should be noted that this situation is not a new phenomenon, but has been a feature of the recurring history of the DRC from the time of King Leopold II of Belgium to the establishment of the predatory state of the late President Mobutu. The four years of war have only exacerbated the already existing situation.

(b) That the early establishment of an all inclusive transitional Government in the DRC would be a positive step towards halting the exploitation of Natural Resources (Para 151). This has been the consistent view of signatories of Lusaka Ceasefire Agreement. However, the key to the issue of continued monitoring should be with the new political dispensation in the DRC.

31. Uganda, however, disagrees with the following observations by the UN Panel:

(a) That the withdrawal of foreign troops will not end the illegal exploitation of natural resources because of the existence of networks to continue with the exploitation thereafter (Para 150). In the case of Uganda, there is no proof of the existence of such networks.

(b) That it is the political will of those involved with the networks that would halt the illegal exploitation of resources in the DRC and that the Lusaka, Pretoria and Luanda Agreements do not address the economic component of the conflict (Para 152). The whole observation is incorrect given the following facts:

- The Lusaka Ceasefire Agreement and the Luanda Agreement are strong and clear statements of political will and commitment.
- The Lusaka agreement establishes a framework for the building of a strong state able to, inter-alia, create conditions for economic developments.
- The sun city resolutions include a chapter addressing financial and economic issues.
- Article 6 of the Luanda agreement addresses the social economic issues of trade and investment, which are to be implemented through a Joint Permanent Commission for Cooperation between Uganda and the DRC.

Conclusions of the UN Panel of Experts

32. Uganda welcomes the conclusion that an Embargo or a moratorium banning exports of raw materials originating in the Democratic Republic of the Congo is not viable because it would hurt the citizens, government and the natural environment.

33. We also welcome the principle of punitive measures to be taken against those who are involved in the illegal exploitation of the natural resources (Para 155). However, any sanctions against individuals or companies should be applied as a result of a judicial process.

34. Uganda also agrees with the conclusion that disincentives be enacted to put pressure in case of non-compliance with the Lusaka Ceasefire, Pretoria and Luanda Agreements signed (Para 159). This has long been the lacking component to expedite the implementation of these agreements.

35. On the proposal to hold a Regional International Conference on peace, security, democracy and sustainable development in the Great Lakes region (Para 160), Uganda reiterates its view that this conference should be held after implementing the Lusaka Ceasefire Agreement. This would avoid undermining the regional consensus encapsulated in this agreement and the current momentum of troops withdrawal provided for under the Pretoria and Luanda Agreements. Economic Regional Integration is welcome idea and can be achieved within the framework of the African Union/NEPAD.

VII: RECOMMENDATIONS OF THE UN PANEL OF EXPERTS

36. Uganda would like to make comments on the following recommendations:

Panel's Recommendation (Para. 162)

Regional economic integration and trade could be the focus of an agreement or set of agreements that could emerge from discussions regionally, including at the International Conference on peace, security and sustainable development.

Comments:

The International Conference on the Great Lakes Region should be held after the implementation of the Lusaka, Pretoria and Luanda Agreements. However, to avoid duplication and waste of resources, the international conference should be held within the framework of the African Union/NEPAD.

37. **Panel's Recommendation (Para 163)**

Reconstructing and reforming the state institutions of the Democratic Republic of Congo, particularly the state's capacity to secure its territory and borders.

Comments:

Uganda welcomes the idea of a strong Government in the DRC able to control the country's natural resources and borders so that its territory is not used to destabilize her regional neighbours.

38. **Panel's Recommendation (Para 170)**

The Governments of the countries where the individuals, companies and financial institutions that are systematically and actively involved in these activites are based should assume their share of the responsibility.

39. **Comments:**

Uganda welcomes the idea of governments taking responsibility to use the evidence adduced by the panel to subject to trial and conviction of individuals and entities operating within their respective borders. Uganda has established a Judicial Commission of Inquiry headed by Justice Porter and would encourage others, especially the end-user countries to do likewise.

40. **Panel's Recommendations (Paras 174-176)**

Restrictions on business enterprises and individuals. Travel bans, freezing personal assets of persons involved in illegal exploitation and barring selected companies and individuals from accessing banking facilities and other financial institutions from receiving funding.

Comments:

Uganda would support the above measures to be taken provided that the individuals and companies implicated by the UN Panel of experts are first subjected to a judicial process.

41. **Panel's Recommendation (Para 179)**

Promotion of post-conflict peace-building programmes including regional integration, capacity-building...

Comments:

Uganda strongly supports and endorses the recommendation for the strengthening of regional integration and capacity building as part of the post-conflict peace building programme. These should be the priority areas for the UN and the international community to assist Africa in the implementation of NEPAD.

42. **Panel's Recommendations (Paras 186 & 187)**

There is need for a monitoring process to scrutinise the situation in the Great Lakes region to ensure that those exploitation activities are significantly curbed.

Comments:

Uganda is of the view that after the establishment of a strong and capable central Government in the DRC under the Lusaka Ceasefire Agreement and beyond, the idea of continued monitoring will not be necessary. In any case the decision on this should be the responsibility of the new political dispensation in the DRC.

VIII. WAY FORWARD

43. Uganda remains convinced that the UN Security Council should put priority emphasis on the speedy implementation of the Lusaka Ceasefire Agreement and the supporting agreements made in Pretoria and Luanda. This will lead to the establishment of a new transitional government and state capacity to guarantee against the illegal exploitation of the natural resources and other forms of wealth of the DRC.

44. The speedy implementation of disarmament, demobilisation, reintegration, repatriation and resettlement (DDRRR) still remains key to peace and security in the Great Lakes region. Uganda, therefore, calls upon the UN Security Council to strengthen MONUC and support capacity building programmes for peace-keeping/building by African countries in order to implement DDRRR.

45. The way forward for Ituri is through the implementation of Luanda Agreement that provides for the Pacification Commission. The International Community should provide adequate material support for the Ituri Pacification Commission. The UN Security Council at this stage should assume its responsibility and provide adequate deployment of MONUC for the purpose of maintaining law and order in the area, given the fact that UPDF is committed under the Luanda Agreement to complete withdrawal from Bunia by 15 December 2002.

46. The proposed international conference on peace, security and sustainable development should take place under the auspices of the UN and AU soon after the establishment of the transitional governments in Burundi and the DRC. Issues to be discussed at the international/regional conference for the Great Lakes should include:

- **Post-conflict rehabilitation, reconstruction and development in the Great Lakes Region.**
- **Measures to support the deepening of regional/economic integration especially in infrastructure and human resources development.**
- **Capacity-building for peace-keeping/building and conflict resolutions.**
- **Strengthening AU capacity to monitor the post-conflict reconstruction in the context of NEPAD.**

47. Uganda calls upon the countries cited in the Final Report including the end-user countries, to establish independent Judicial Mechanisms to investigate and recommend appropriate actions on allegations of illegal exploitation of the natural resource of the DRC. The UN Secretary-General should cooperate and share information with the member states who wish to establish such judicial mechanisms. Uganda would be happy to share with other countries the experience from the work of Porter Commission of Inquiry in the illegal exploitation of the natural resources and other forms of wealth of the DRC. It is in this context that individual and companied/entities mentioned can be fairly tried and punished.

Kampala, Uganda.

1st November, 2002

Reaction No. 56

REPUBLIC OF RWANDA

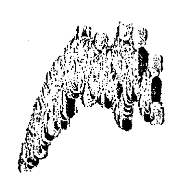
REPLY TO THE FINAL REPORT (DOCUMENT S/2002/1146) OF THE PANEL OF EXPERTS ON THE ILLEGAL EXPLOITATION OF NATURAL RESOURCES AND OTHER FORMS OF WEALTH OF THE DEMOCRATIC REPUBLIC OF CONGO

OCTOBER 23, 2002

TABLE OF CONTENTS

ACRONYMS

RPA	Rwandese Patriotic Army
RCD – GOMA	Rassemblement Congolais pour la democratic
ANC	Armée Nationale Congolaise
DRC	Democratic Republic of Congo
MONUC	United Nations Organization Mission in the DRC
ex- FAR	Force Armies Rwandaise



I. INTRODUCTION

The Panel of Experts on the Illegal Exploitation of the Natural Resources and other forms of Wealth of the Democratic Republic of Congo has issued its final report.

This final test report became necessary because the previous ones were entirely discredited. The panel had been tasked to review and update the previous reports, and produce a more sound and researched analysis.

However, it is clearly, the report also lacks credibility and would ordinarily not even merit a response. However, because of the gravity of allegations contained in the report, however outrageous they may be, the Government of Rwanda wishes to put its response to the allegations contained in the report on record.

The report is biased, subjective and not based on credible evidence. Its authors make wild and generalised

allegations about the existence of criminal groups linked to national armies but does not, at least in the case Rwanda, identify the individuals who comprise the groups. The report does not make any attempt to clarify which country's laws have been violated and what crimes these individuals have committed.

The authors of the report allege that they are in possession of much documentary evidence but they do not make this evidence public. The victims of the report's defamatory statements are deprived of the benefit of having this so called evidence subjected to public scrutiny. The report's authors say they had access to reliable witnesses but have not indicated who these sources were, choosing to cite one ex-Interahamwe militia man whom any reasonable person would ordinarily dismiss as partial and discredited. The report says the RPA has widespread mining interests in the DRC but fails to name the location of even one such mine.

The Government of Rwanda denies in the strongest terms possible the preposterous and malicious allegation that the presence of its troops in the DRC was in any way motivated by a desire to exploit that country's resources. The Government of Rwanda denies the deplorable allegations that any of its institutions or public officers, whether civilian or military, has in any way exploited the natural resources of the DRC or benefited from Rwanda's presence in that country. On the contrary, the presence of Rwanda's troops in the DRC has been a financial burden and a sacrifice for the people of Rwanda.

The Government of Rwanda is shocked by the outrageous contents of this report. The report contains innumerable false and alarming allegations and makes conclusions which are not supported by any evidence. It also makes adverse recommendations for which there is no factual basis and whose objectives are questionable.

I. THE SECURITY CONCERNS OF RWANDA IN THE DEMOCRATIC REPUBLIC OF CONGO

The report makes the shallow and cynical assertion that of the causes of war in the Democratic Republic of Congo are the desire by various groups to control minerals, farm produce, land and even tax revenues (para 12). The authors of the report make the senseless argument that the real long-term purpose of the military presence of Rwanda in the DRC was 'to secure property'(para 65) and asserts, against the weight of all available evidence and the UN Security Council's own assessment; that Rwanda does not face any threat from the DRC; that Rwanda's security concerns are a figment of imagination and that her presence in the DRC was solely motivated by economic gain; that with minor exceptions, the objective of military activities of Rwanda in the DRC was to secure access to mining sites or to ensure the supply of captive labour (para 93); that the rationale for Rwanda's presence in the DRC was to increase the number of Rwandans in the eastern DRC and to encourage those settled there to act in unison to support Rwanda's economic control (para 69).

The report's assertion that Rwanda does not face any security threats from the DRC is outrageous and constitutes a continuation of the conspiracy to negate the 1994 genocide and protect the genocidaires, Interahamwe, the Ex-FAR and their supporters. The authors of the report certainly know that this absurd assertion is inconsistent with widely acknowledged facts given that the chairman of this panel was the chairman of the United Nations Commission of Inquiry on the Sale, Supply and Shipment of Arms and related material in the Great Lakes Region of Africa.

The dangers posed to Rwanda by these groups have been confirmed by the above mentioned Commission of Inquiry on the sale, supply and shipment of arms and related material in the Great Lakes region of Central Africa[1].

The United Nations Security Council has passed a resolution[2] on the activities of these groups in the DRC.

[1] The Commission's report is UN document S/1998/581

[2] Resolution 1234 (1999)

The resolution provides[3] that the Security Council:

> *«Condemns the continuing activity of and support to all armed groups, including the Ex-Rwandese Armed Forces, Interahamwe, and others in the Democratic Republic of Congo. »*

The threats to Rwanda's security date back to 1994. After killing more than a million Rwandans, the genocidal forces fled to the then Zaire. The ex-FAR begun regrouping upon arrival in the refugee camps. The Interahamwe and other militia were remobilised and commenced military training. New combatants were recruited from residents of all the refugee camps.

Human Rights Watch documented the activities of these armed groups. In May 1995, the Human Rights Watch "Arms Project" produced a report[4] which gave details of these groups. The report states:

> *"A year after the genocide, the perpetrators of the Rwandan genocide have rebuilt their military structure, largely in Zaire, and are rearming themselves in preparation for a violent return to Rwanda. Waging a campaign of terror and destabilisation against the new government in Kigali, they have vowed, in the words of one official of the former government, Col. Theoneste Bagosora, to "wage a war that will be long and full of dead people until the minority Tutsi are finished and completely out of the country". Several members of the international community... have aided and abetted this effort through a combination of direct shipments of arms, facilitating such shipments from other sources, and providing other forms of military assistance, including training... Acting with impunity, these forces rule over the refugee population through intimidation and terror, effectively preventing the return of refugees to their homes in Rwanda, while inducting new recruits into the former Rwanda Armed Forces (FAR) and militias. Emboldened by the military assistance, including arms, they openly declared their intention to return to Rwanda and, in the words of one ex-FAR Commander, Col. Musonera, " to kill all Tutsi who prevent us from returning". Currently, the ex-FAR has an estimated troop strength of 50.000 men over a dozen camps and has brought the militia more tightly under its control."*

The presence and activities of these groups, so close to Rwanda's borders, represented a very serious threat to Rwanda's survival. The Government of Rwanda protested time and again to the international community, pleading that the militarisation of the camps be brought to an end, but to no avail. At the end of 1996, Rwanda was compelled to move in to close the camps, liberate the refugee hostages and repatriate them back to Rwanda.

The armed groups, which had been operating from the camps did not, for the most part, return to Rwanda with the rest of the refugees. Together with a minority of civilian non-combatants, they moved further into the DRC, some even going as far as the Central African Republic, Congo Brazzaville and Angola.

The aforementioned groups, in collaboration with some of the refugees who had been repatriated to Rwanda in 1996 and 1997, launched a new insurgency against Rwanda in 1997 and 1998[5]. However, the Government of Rwanda was able to put an end to this rebellion and the remnants of these insurgents moved back into the DRC.

These insurgent groups have never been disarmed, nor have they abandoned their plans to wage war against Rwanda. At some point during their stay in the DRC, they were able to secure an agreement for assistance from President Kabila's government. The Government of the DRC clandestinely started remobilising these combatants, retraining them and arming them to wage war against Rwanda once more. The Government of Rwanda raised these issues with the Government of the DRC on numerous occasions in 1997 and 1998, but the Government of the DRC paid no heed and continued with the process of preparing these groups to resume war against Rwanda.

The outbreak of conflict in the DRC in August 1998 offered these armed groups a golden opportunity to further

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[3] Article 8.

[4] See the report, ***Arming with Impunity***, published in May 1995.

[5] See the study, ***Rwanda: The insurgency in the North West***. Africa Rights (1998).

their plan to invade Rwanda and continue genocide. The Interahamwe and Ex- FAR now make up the backbone of the army of the DRC government. The Government of Rwanda has credible intelligence, which it has communicated to the Third Party under the Pretoria Agreement, that the Ex-Far and Interahamwe in the DRC government army number more than 40.000. They have been armed and supplied with weapons. They fight on behalf of the DRC government with the promise that it will be assisted to fight Rwanda if and when the current conflict is resolved in favour of President Kabila's government. Since 1998, the RPA has been engaged in daily battles with these genocidal forces as illustrated by the over 6.000 captives who can bear testimony.

Armed Rwandese militia groups have been involved for some time in other diverse conflicts in the region, particularly in Congo Brazzaville, Angola, Burundi, Sudan and Central African Republic

The existence and active operations of these armed groups represent an extremely grave challenge to the maintenance of peace and security in Rwanda.

The United Nations Commission on Human Rights has in the past underscored the threat posed to Rwanda's security by armed groups operating from the DRC. One of its resolutions on Rwanda[6] has expressly provided that the Commission on Human Rights:

"*Article 14*

a. Takes note with concern the report of the International Commission of Inquiry on the sale, supply and shipment of arms and related material in the Great Lakes region of Central Africa;

Article 15

Condemns the illegal sale and distribution of arms and all other forms of assistance to former members of the Rwandan Armed Forces, Interahamwe and other insurgent groups that have a negative impact on human rights and undermine peace and stability in Rwanda and the region. "

The Government of the DRC by signing the Lusaka and Pretoria Agreements, conceded that these groups exist and undertook to identify, intern, disarm and repatriate them. MONUC has confirmed their presence.

Lastly, the UN Security Council has on numerous occasions acknowledged the dangers which the presence of armed groups in the DRC pose to Rwanda's stability[7].

A report of the so called experts which, calls into question the dangers posed to Rwanda's security by these groups can only be an illustration of the sheer incompetence or deliberate conspiracy of the authors.

I. CRIMINAL GROUPS

The report alleges that there are criminal groups linked to the armies of Rwanda, Uganda and Zimbabwe and the Government of the DRC which have benefited from the micro conflicts in the DRC; that the groups have built a self financing war economy centered on mineral exploitation; that these groups will not disband voluntarily even as the foreign military forces continue their withdrawals (para 12).

The Government of Rwanda categorically denies that its armed forces which have been based in the DRC have had any links whatsoever with any criminal groups. The Government of Rwanda also denies that any criminal groups have operated in areas in which the RPA was based. The report, apart from making general allegations about the existence of these criminal groups in areas under the control of the RPA, has not furnished any details of members of the alleged criminal groups. The Government of Rwanda challenges the authors of the report to give specific particulars of the identity of these criminal groups, their membership, the nature of their crimes and

[6] Resolution 2000/21.

[7] See UN Security Council Resolutions.

clear evidence of linkage to the RPA.

I. ILLEGAL MINING AND TRADE IN MINERALS

The report alleges that *real long-term purpose* of the military presence of Rwanda in the DRC was '*to secure property*'(para 65); that the RPA has been involved in large scale mining activities in areas of Eastern DRC which have been under its control; that the RPA mining *detaches* whose responsibility was to manage mining activities(para 15); that there are RPA units specialising in mining operations which remain in place and active in the DRC, though they have ceased to wear uniforms and intend to continue the mining activities under a commercial guise (para 15); that there are RCD forces under the command of RPA officers which are used to attack self help groups who obstruct their commercial operations, to eliminate specific enemies and to provide security around gold, coltan and diamond rich areas (para 16).

The Government of Rwanda categorically denies the malicious imputation that its decision in sending Rwandan troops to the Congo was motivated by economic considerations. Neither the RPA as an institution nor any of its members ever engaged in mining activities during the period it was based in the DRC. Consequently, the RPA units which the report says specialise in mining activities do not exist. No members of the RPA remain in the DRC to continue mining activities as alleged or for any other purpose.

The content of the report is aimed at distorting the mission of the RPA. The RPA is not some form of quasi-commercial firm as the panel would have the world believe. The allegation that the RPA has a commercial wing named "Congo Desk" is nothing but a fabrication intended to wrongfully portray the RPA negatively and thus down play its role in securing Rwanda. This is illustrated by the fact that the previous report (para 127 S/2001/357) the "Congo Desk" was referred to as a department of external relations yet the current report calls it a commercial wing of the RPA. In particular, the report is aimed at misleading the whole world that the primary objective of Rwanda's military presence was economic exploitation and that security considerations were non-existent. The RPA went into the DRC because the genocidal forces operating from DRC territory threatened Rwanda's vital security interests. By sending its troops into the Congo, Rwanda has been able to enjoy unparalleled peace and security, a fact that even our detractors and foes can hardly deny.

I. REQUISITION OF PRIVATE PROPERTY FOR WAR EFFORT

The report alleges that the RPA has requisitioned or looted private property for its military campaigns(paras 90 and 92); that RPA forces have attacked and burnt villages to seize coltan mined by some Hutu groups or villages (para 93);

The RPA has not requisitioned private property for the war effort as the alleged in the report. The allegations that RPA forces have attacked and destroyed villages in order to steal minerals belonging to the population are false. Instead, the RPA has worked tirelessly to protect the population, irrespective of their ethnic belonging from marauding militia such as the Mai Mai and other armed groups including the Ex- FAR and Interahamwe. The RPA is widely acknowledged to be a very disciplined military force. Indeed, its brilliant success over the years is owed to its exemplary discipline. The report's portrayal of the RPA as a criminal and bandit force and the allegation that it has targeted Hutu communities in the DRC to deprive them of their property is untrue and reflects the panel's prejudice and attempts to incite ethnic hatred.

VI. POST- WITHDRAWAL ECONOMIC CONTROL MECHANISMS

The report alleges that in an attempt to retain economic control of areas of the DRC after the withdrawal of its troops, the Government of Rwanda, like Zimbabwe and Uganda, has adopted strategies for maintaining the mechanisms for revenue generation, many of which involve criminal activities (para 13); that Rwanda has replaced Congolese directors of parastatal companies with businessmen from Kigali to ensure continuing revenue from water, power and transportation facilities (para 15).

The appointment of management of public enterprises in the DRC is the sole responsibility of the Congolese that these Congolese are not the ones favoured by the so-called group of experts cannot be blamed on Rwanda. Rwanda does not entertain any designs to exercise economic control on any portion of the territory of the DRC. The allegation that after its withdrawal, Rwanda has left behind mechanisms for generating revenue is utter falsehood. Rwanda does not have any control over the appointment of management of public enterprises in the DRC. No Rwandans have been appointed to replace Congolese managers as heads of public enterprises. The Government of Rwanda challenges the authors of the report to name even a single Rwandan businessman who has been appointed to such positions and the public enterprises whose Congolese heads have been replaced by Rwandese.

I. REPLACEMENT OF LOCAL CONGOLESE CURRENCY WITH THE RWANDAN FRANC

The report alleges that Rwanda has replaced the local currency with the Rwanda Franc in areas formerly under the control of its troops (para 15);

Rwanda has not replaced its currency with the Congolese currency in areas of eastern DRC where the RPA was based. What is true is that the Rwandan Franc and currencies of some other neighbouring countries are acceptable as payment in business transactions throughout eastern DRC, but more particularly in border areas. The panel did not make any ground-breaking discovery in finding out that the currency of Rwanda is used in some areas of the DRC. The use of the Rwandan Franc in areas of the DRC adjacent to Rwanda is historical and did not start when the RPA went to the DRC. These foreign currencies in border areas is determined by market forces, as Congolese businessmen and the population at large want Rwandan currency to facilitate the purchase of goods from Rwanda. The use of Rwandan currency also helps avoid the risk of devaluation of the Congolese currency. In any event the use of Rwandan currency should not be interpreted as a form of exploitation of the DRC. The United States Dollar for example is widely used across the whole of the DRC. The panel has not interpreted this as an indication that the United States is exploiting the Congo. The authors of the report ought to explain how the use of Rwandan currency constitutes economic exploitation and the use of the US dollar does not.

I. ALLEGATIONS RELATING TO A CONTINUING MILITARY PRESENCE OF THE RPA IN THE DRC.

The report makes false and unfounded allegations that the withdrawal of Rwandan troops from the DRC has only been partial (para 16); that that there are RPA which specialise in mining operations which remain in place and active in the DRC, though they have ceased to wear uniforms and intend to continue the mining activities under a commercial guise (para 15); that the RPA has recently undertaken an operation to obtain a large number of Congolese passports so as to give an appropriate identity to RPA who continue to be stationed at strategically important sites in the in the DRC (Para 15); that the RCD-Goma has re-organised its army, the ANC, to accommodate large numbers of RPA and that a significant number of RPA will be integrated into the ANC (Para 16); that most of the ANC forces still have RPA leadership.

The report's allegations that Rwanda left or has subsequently returned any of its soldiers in the DRC is completely false. Rwanda withdrew all its troops from the DRC. The withdrawal of Rwandan troops was conducted in broad daylight, in the presence and under the supervision of the Third Party (which includes the United Nations Secretary General) as well as representatives of the DRC Government. The total number of troops who were withdrawn from the DRC was 23, 400. The withdrawal was voluntary, in as much as the Government of the DRC had not yet fulfilled its obligations under the Pretoria Agreement to identify, disarm and repatriate ex-Far and Interahamwe present on its territory. Rwanda withdrew its troops from the DRC voluntarily before it was legally obliged to. There was no point in hiding the presence of Rwandan troops in the DRC, had had their continued presence there been considered necessary. No Rwandan troops have been integrated into the RCD-Goma forces as alleged in the report of the panel. The Government of Rwanda challenges the panel to identify by name members of the RPA who have stayed over in the DRC or been integrated into the ANC.

The withdrawal of the RPA from the DRC was carried out in the presence and under the supervision of MONUC. MONUC, the UN agency which is permanently on the ground in the DRC, has certified that Rwanda has withdrawn all its forces from the DRC. On the other hand, the members of the panel which compiled this report completed their investigations more than four months ago. They did not return to the Great Lakes Region

to continue investigations after Rwanda started its withdrawal from the DRC. In the circumstances the contradiction between MONUC and the panel as to whether or nor Rwanda has completely withdrawn from the DRC can only be an indication of the panel's obvious bias against Rwanda. It is also an indication of the fact that the panel has been manipulated by some interests hostile to Rwanda.

The withdrawal of the RPA from the DRC was a victory that caught Rwanda's critics and foes by surprise. This is precisely why the enemies of Rwanda want to make the world believe that Rwandan soldiers are still in the DRC disguised in civilian clothes as businessmen. The malicious allegations that the RPA still has some presence in the Congo are politically motivated, designed to discredit Rwanda's stand that its army was in the DRC on account of genuine and legitimate security concerns. These allegations are also intended to undermine the on-going peace process in the Great Lakes Region

I. INVOLUNTARY REPARTRIATION OF CONGLOSE REFUGEES

The report alleges that Rwandan officials have repatriated to North Kivu hundreds of Tutsi refugees in Rwanda, allegedly as part of a new tactic for maintaining Rwanda's presence in the DRC;

The Government of Rwanda denies that any Congolese refugees have been repatriated to the DRC against their will. The repatriation of Congolese refugees from Rwanda was a result of the success of the RPA in the promotion of inter-ethnic harmony and the pacification of areas of eastern DRC where the RPA was operating. The return of the Congolese refugees of Rwanda ethnicity to the DRC was initiated by other Congolese communities who invited and encouraged them to return and mobilised the necessary resources to finance the repatriation. The refugees who have returned to the DRC departed of their own free will. Those refugees who did not wish to return to the DRC are free to stay in Rwanda.

Admittedly the Government of Rwanda has not objected to the return of refugees who wish to go back to Congo. Congo is their motherland. Some extremist Congolese would wish to deny these ethnic Rwandese of their citizenship and advocate for their stay in Rwanda. These refugees came to Rwanda fleeing the Interahamwe and ex-Far. The Interahamwe, ex-Far and Congolese extremists should not, under any circumstances, be permitted to succeed in displacing these Congolese citizens permanently and rendering them stateless.

I. USE OF FORCED LABOUR

The report alleges that a variety of forced labour regimes have been found at sites which have allegedly been managed by the so-called RPA mining *detaches*, some for coltan collection, some for transport, others for domestic services. The report says that there are many accounts reporting widespread use of prisoners imported from Rwanda who work as indentured labour (para 76). The report further alleges that in areas which have been under the control of the RPA, children have become instruments of war, forced to work in the mines and conscripted into the armed forces (para 94); that with minor exceptions, the objective of military activities of Rwanda in the DRC was to secure access to mining sites or to ensure the supply of captive labour (para 93);.

The allegation that the RPA has transported prisoners to the DRC to work in the mines is not only baseless and unfounded, but malicious. All detention centres of Rwanda are open to the International Committee of the Red Cross. The ICRC visits and registers each of these prisoners each month. Prisoners can only be removed from prisoners on the written authority of a prosecutor. It would be impossible to remove any prisoners from these detention centres without the knowledge of the ICRC. Prisoners are visited by members of their families several times every week. In the circumstances, the disappearance of prisoners from Rwanda's prisons could never be kept a secret. The report's allegations that RPA imported prisoners to work in the mines in the DRC is an insult to both the people of Rwanda and members of the international community at large. The report's attempt to portray Rwanda as a lawless country where prisoners can secretly be taken out of prison and take to work as forced labourers in another country is very only absurd. The Government of Rwanda challenges the authors of the report to identify by name a single prisoner who has been taken from a detention centre to work in the mines

in the DRC.

Similarly, the Government of Rwanda denies that its army has forced children or indeed any other people to work in any mines against their will.

I. UNDERMINING THE ECONOMY OF DRC

The report alleges that the RPA has schemed to seize control of the economy of Kisangani and others areas of eastern DRC selling consumer items at attractive prices and that this has led to the collapse of local industry, such as the textile factory and palm oil production (paras 86, 87).

The Government of Rwanda denies that the RPA is involved in the supply of consumer goods to the population of eastern DRC. The supply of consumer goods is done by private businessmen, most of whom are Congolese. The supply of such goods is also open to all businessmen.

In any event, the suggestion that the supply of consumer goods to the community at reasonable prices is a bad thing to do is outrageous. Consumers would be the best judges as to what is in their best interest as far as the choice of goods on which they wish to spend their money is concerned.

The allegation that Rwanda is scheming to destroy Congo's economy is ridiculous since the economy of the DRC collapsed long before Rwanda went into the Congo. The social problems and economic collapse of the DRC have not been of Rwanda's making. The exploitation and plunder of the resources of the DRC begun more than a century ago when King Leopold acquired the Congo as his personal state, continued through out the period of colonization and the long reign of Mobutu and has reached its zenith during the Kabilas's presidency. The report's attempt to blame Rwanda for Congo's current economic ills is an interesting and dramatic turn of events whereby the very societies which have long plundered the Congo and nurtured the successive dictators who facilitated the plunder are turning around to blame innocent Rwanda

XI CONCLUSION

The report of the previous panel was a collection of many false and baseless allegations. The Government of Rwanda responded to those specific allegations (paragraphs 33, 37, 38, 55, 58, 60, 61, 64, 68 76, 77, 83, 84, 110 – 114, 196 - 197 to name a few) and takes note that the current panel has not dared repeat any of the specific allegations to which the Government of Rwanda drew attention.

It is most unfortunate that the panel which compiled the current report did not learn from the mistakes of its predecessors and has failed to address the short comings which led to the rejection of the previous report.

The Government of Rwanda would like to point out the following fundamental shortcomings of the report.

1. The report is a result of an unprofessional, prejudiced process of investigation

As already indicated in the introduction to this rebuttal, the report is biased, poorly researched and displays grossly unprofessional conduct on the part of its authors. Nothing illustrates the lack of objectivity and prejudice on the part of the members of the panel than the report's views on the nature of the security threats posed to Rwanda by the presence of Interahamwe and the Ex-FAR in the DRC. The report's findings disregard well-known facts about the presence and activities of the Ex-Far and Interahamwe in the DRC.

The Rwandan army had to go into the DRC because the international community abdicated its responsibility not only to prevent or stop the 1994 genocide but also to disarm the Interahamwe and Ex-FAR and protect the people of Rwanda from their continued attacks. That the so-called experts should have the audacity to shamelessly suggest that the presence of Rwanda in the DRC was motivated by material considerations is not only an unforgivable insult to the memory of victims of the 1994 Rwanda genocide and subsequent violence at the hands of the Ex-FAR but would appear to be a conspiracy to cover up the continuing failure of the international community to address the problems created by the presence in the DRC of the genocidal forces.

Many other issues in respect of which the panel's findings and conclusions have fallen far short of standards of a panel established by the Security Council have been pointed out in this rebuttal to the report.

1. **The report deliberately ignores the history and gives a distorted picture of the dynamics of trade links in the Great Lakes Region**

There are trade exchanges between eastern DRC and many other countries, including Rwanda. As the report itself acknowledges, this trade benefits the people of Congo as much as it benefits the foreign businessmen who do trade in the DRC. Trade between Rwanda and Congo has been going on from time immemorial and the economic life of the Eastern DRC cannot be expected to be shut down because the central government does not control the area.

1. **The report fails to recognise the background to and implications of the rebellion in Eastern DRC.**

Rwanda acknowledges that there is open and transparent trade between Rwanda and some area under the control of the RCD. The war in the DRC has now been going on for four years. The RCD is for all intents and purposes the authority of government in eastern DRC. It is recognized as such by the Lusaka Peace Agreement to which the Government of Congo is a party. States and even the United Nations deal with and recognize it. The rebel administration is responsible for governing of this territory. They maintain security, provide social services, levy tax and regulate trade much as any Government anywhere else does. The notion that all business going on in rebel controlled areas in accordance with the laws in force in that area is illegal does not make any sense. Neither would the cessation of economic activities between the eastern DRC and the rest of the world have been in the interest of the population.

1. **The authors of the report have a flawed understanding of 'legitimacy' and ' illegality' as legal concepts**

In fulfilling its mandate to prepare a report on the 'illegal Exploitation of the Natural Resources and other forms of Wealth of the Democratic Republic of Congo Government of Rwanda', the panel should first and foremost have addressed the issue as to which business transactions are legal and which are illegal.

What constitutes legal and illegal exploitation of natural resources is a legal matter. The report disregards the applicable treaties and conventions and does not make any attempt to explain the legal basis for categorising business carried out in eastern DRC al illegal.

1. **The report fails to take into account the provisions of bilateral and multilateral treaties to which both Rwanda and the DRC are parties**

Trade between Rwanda and the DRC is permitted by the laws of and bilateral and multilateral agreements between our respective countries.

In light of the above facts, it is inconceivable that a panel established by the United Nations Security Council could seriously argue that Rwanda does not face any threats to her security from the DRC. As the insurgency of 1997 and 1998 showed, these groups have the capacity to wreak havoc and instability in Rwanda and the entire region.

1. The report promotes the ideology of genocide.

One of the most positive results of the deployment of the RPA in the DRC has been the restoration of ethnic harmony and the pacification of areas of eastern DRC where inter ethnic violence was previously the order of the day. The authors of the report deliberately covered- up this positive development and

instead sought to highlight and emphasis potential for ethnic divisions.

The most shocking aspect of the report is the attempt by the panel to create the Hutu/ Tutsi dichotomy and to incite the Banyarwanda population not only in Rwanda but also in the Great Lakes Region to violence. The allegation of abandonment of Hutu members of the RPA in the DRC (para 16); of coercion and violence against Congolese Hutu (para) 67) and deportation to DRC and enslavement of Rwandan Hutu (para) 93) can only be intended to incite Hutus to violence against Tutsis. The Government of Rwanda condemns the use of a UN panel or of the UN itself to be a conveyor of incitement to ethnic, racial or religious violence whatever the excuse.

The Government of Rwanda requests the UN Secretary General to seek an appropriate explanation from the members of the panel and to take the necessary measures to avert any adverse consequences that might result from the irresponsible report of the members of the panel.

In view of the fundamental shortcomings of the report enumerated above, the Government of Rwanda is of the opinion that the report is not worthy of the serious consideration of an organ such as the Security Council. The acceptance of such a prejudiced and grossly unprofessional report by the Security Council would no doubt tarnish the Security Council's image.

The Government of Rwanda recommends that the Security Council rejects the report in its entirety.

Reaction No. 57



189/2003-8/6

The High Commission of the Republic of South Africa Presents its compliments to the United Nations Panel of Experts on the Illegal Exploitation of the Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo and has the honour to refer to the Final Report of the Expert Panel that was released on 21 October 2002 as document S/2002/1146.

In accordance with operative paragraph 11 of UN Security Council resolution 1457 (2003), the High Commission wishes herewith to submit the Response of the South African Government to the Final Report. The South African Government requests that this Response be included as an attachment to the Panel's next report as provided for in resolution 1457 (2003).

The High Commission of the Republic of South Africa avails itself of this opportunity to renew to the United Nations Expert Panel on the Illegal Exploitation of the Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo the assurances of its highest consideration.

30 MAY 2003



NAIROBI

May 2003

Response by the South African Government to the Final Report of the United Nations Expert Panel on the Illegal Exploitation of the Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo (DRC)

The Government of the Republic of South Africa presents its compliments to the United Nations Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo (DRC)and has the honour to refer to the Final Report of the Expert Panel that was released on 21 October 2002 as document S/2002/1146. In accordance with paragraph 11 of resolution 1457 (2003), as adopted by the United Nations Security Council on 25 January 2003, the South African Government wishes to submit the following comments on the Final Report.

The United Nations Security Council is well aware of the commitment the South African Government has made towards achieving a peaceful resolution of the conflict in the DRC, as well as in the wider Great Lakes region. South Africa believes that the realisation of peace in the DRC is essential for contributing to the renewal of he African continent and the achievement of the goals of the New Partnership for Africa's Development NEPAD), a programme of the African Union.

The South African Government has taken all possible measures to implement Security Council decisions on the DRC and to assist the Expert Panel in the execution of its mandate. In this regard, the Government wishes to reaffirm its full support for the work of the Security Council together with its subsidiary bodies.The South African Government believes that the work of the Panel of Experts on the Illegal Exploitation of the Natural Resources and Other Forms of Wealth of the DRC complements peace efforts in the Great Lakes Region. In this regard, the Expert Panel's Final Report is important in highlighting the impact of the illegal exploitation of DRC natural resources in fuelling the conflict in the Great Lakes region. All the Agreements reached in resolving the conflict in the DRC cannot be implemented as long as there is a belief that war is more profitable than peace.

Although the South African Government is not implicated in the Final Report presented to the Council, the Government wishes to register its disappointment with certain aspects of the Report, the methodology used by the Panel in gathering its information and some of the conclusions and recommendations made in the Report.

The South African Government met with the Panel on several occasions. The Panel expected the South African authorities to conduct further investigations and to take any necessary steps. However, the South African authorities were expected to conduct such investigations with either incomplete or no information. The reading of the Panel's report shows that the Panel has a considerable amount of information in its possession that could have been of assistance to further investigations that were conducted by the South African authorities. The Panel, however, chose not to divulge this information except using it as supposed evidence contained in the Final Report.

The Government would like to address some of the specific issues that have been raised by the Panel with regard to South Africa, South African-based companies and individuals:

In paragraph 31, the Report states that "Also working with ZDF is a convicted criminal based in South Africa, Nico Shefer, who has arranged for Zimbabwean officers to be trained in diamond valuation in Johannesburg. Mr Shefer's company, Tandan Holdings, has a 50 percent stake in Thorntree Industries, a joint venture diamond-trading company with ZDF." On 14 June 2002, the South African Government was requested by the Panel to provide information concerning the trading, whether openly or clandestinely, of Congolese diamonds in South Africa or the transport of Congolese diamonds through South Africa, by the Minerals Business Company (MBC). It was stated by the Panel that the South African-owned or -based company Thorntry (or Thorntree) reportedly had an agreement with MBC to trade its shipments of Congolese diamonds. On 31 July 2002, the South African Government informed the Panel that it had no information to verify the allegation concerning the transportation of diamonds, bought by Thorntree, through South African territory. It should also be noted that the issue of Mr Shefer arranging for Zimbabwean officers to be trained in diamond valuation in Johannesburg has never been raised by the Panel with the South African Government. The question of Mr Schefer and Thorntree Industries is similarly again raised in paragraph 58 of the Report.

§ In paragraph 52, the Report states that "Mr Al-Shanfari instructed his security chief to smuggle diamonds from the Sengamines concession to Johannesburg, South Africa, and deliver them to Ken Roberts, the chief executive of Serengeti Diamonds." This information has never been shared with the South African Government nor as this ever the subject of an enquiry addressed to the South African Government by the Panel.

§ In paragraph 139, the Report identifies South Africa as one of 11 African States through whose territory goods originating in the Democratic Republic of the Congo are likely to pass. The Panel further states that it submitted questions to all of these countries and held substantive discussions with government representatives from five. The Panel enquired about relevant legislation, investigations into the flow of the commodities, measures taken to curb those flows, other possible action to be taken and those Governments' needs for assistance. According to the Report, virtually none of the countries that responded to the Panel's questions had conducted any investigations or adopted any specific procedures for the identification or inspection of the transiting of commodities from the Democratic Republic of the Congo. The Report goes on to state that South African officials confirmed the seizure of a sizeable clandestine shipment of diamonds from the Democratic Republic of the Congo, but provided no details. Also stated, is that none of the authorities in these countries gave any indication that Congolese resources traded through their territories should or could be regarded as conflict goods and that almost none of the countries proposed any meaningful measures to help curb trade in Congolese commodities that are tainted by criminality and militarization.

In September 2001,the Expert Panel approached South Africa regarding procedures followed by South African law enforcement agencies in combating smuggling activities and organised crime, as well as requesting a chart clarifying the division of authorities and responsibilities of the different authorities. On 14 June 2002, the South African Government provided a detailed description of the role and functions of law enforcement agencies in South Africa. In addition, the Government provided the Panel with details of the relevant legislation utilised in curbing smuggling and organised crime. The Government, however, stated that the South African law enforcement agencies are not

aware of any significant or organised groups that are engaged in smuggling or other illegal activities involving diamonds, gold, coltan and other natural resources originating from the DRC. The Panel had also requested the South African Government to provide "Examples of actual cases of smuggling made by the South African law enforcement agencies originating from the DRC and countries involved in the conflict". The information that was provided by the South African authorities confirmed that a DRC national was arrested at Johannesburg International Airport in December 2001 with 13 diamonds in his possession. The Panel was informed that the individual had appeared in court, but that the case had been postponed until June 2002. It was further explained to the Panel that since the court case was still pending (sub judice), no additional information could be provided. This was the only information that was provided to the Panel regarding the seizure of diamonds that had a DRC connection. In the information provided to the Panel it was not possible to indicate the origin of the diamonds.

§ In Annex III to the Report, the Panel lists those business enterprises, which they consider to be in violation of OECD Guidelines for Multinational Enterprises. Twelve South African companies are listed under Annex III. Although no substantiating evidence for these listings is provided, the Report states that "Countries which are signatories to those Guidelines and other countries are morally obliged to ensure that their business enterprises adhere to and act on the Guidelines". With regard to the specific companies mentioned, the Government wishes to comment as follows:

- South Africa has never been approached by the Panel regarding a company by the name of African Trading Corporation.
- Anglovaal, Banro Corporation, Carson Products, Mercantille CC, Saracen, Swanepoel, Track Star Trading 151 Pty Ltd), Zincor, Iscor and Orion Mining Inc have never been mentioned in any of the Panel's previous reports, nor has any information related to their business activities or conduct ever been shared with the South African Government, nor was any of these companies ever the subject of an enquiry addressed to the South African Government by the Panel.

On 14 June 2002, the South African Government was requested by the Panel to provide a "list of all South African, and South African registered companies operating in or with the DRC". During the meeting with the Panel, the South African authorities specifically raised their serious concerns with the Panel about its queries regarding South African companies operating in the DRC, without any indication as to their participation in the illegal exploitation of the natural resources of the DRC. South Africa underlined the fact that unsubstantiated queries by the Panel about the activities of companies operating legally and above-board in the DRC could be interpreted as casting unwarranted aspersions on their activities.

In this context also, it should be noted that South Africa is not a signatory to the OECD Guidelines. Although the objectives of these Guidelines are supported, the Government fails to understand how the Panel could use this mechanism as a means of accountability.

The Report's statements about South Africa, South African companies and South African individuals consequently do not appear to be substantiated by hard evidence or information. Nor does the Panel draw any distinction between legal and illegal activities of companies in its Report. In the Government's interaction with the Panel, the South African authorities have continuously underlined the difficulties that are experienced when dealing with the

vagueness of certain queries received. It was pointed out to the Panel that the provision of more detailed and accurate information would assist the South African authorities to address the issues raised. The South African Government would therefore urge the Expert Panel to substantiate its allegations and the recommendations made in the Report.

In resolution 1457 (2003), the United Nations Security Council stresses the need for dialogue to take place between the Panel and all the relevant parties, which should includean exchange of information. The resolution also urges the Panel to forward all information collected to the relevant Member States, which will enable the States concerned to conduct effective investigations into the alleged irregularities. The relevant Member States are also urged to conduct these investigations in order to verify the findings of the Panel. In this regard, the South African Permanent Mission requested the Panel in a letter dated 5 March 2003 to supply the South African Government with information pertaining to the South African companies listed in the Report. In its Note Verbale 137/03-8/6 dated 11 April 2003, the Government repeated its request for detailed information regarding the listed South African companies. In its Note Verbale of 14 April 2003, The Panel informed the Government that since 4 April 2003 it has been in the process of contacting all the South African nationals and companies or entities listed in its last report in order to invite them to meet with the Panel, establish constructive dialogue and submit reactions by 31 May 2003.

In a letter dated 24 April 2003, the Panel provided the Government with some details regarding the listed South African companies. This included the company registration numbers of some 8 companies, as well as brief comments on a further 6 companies. In the same letter, the Panel informed the Government that in listing an enterprise, "the Panel considered as South African not only those companies incorporated in RSA, but also those with business interests in the country". This revelation by the Panel clearly indicates a serious misrepresentation of the origin of such companies.

The South African Government would therefore urge the Panel to provide the full details of all the South African companies and individuals listed in the Final Report, as well as all information at its disposal Pertaining to their alleged contravention of the relevant Security Council resolutions on the Democratic Republic of the Congo. The Government further wishes to underline the importance of receiving such information at the earliest possible opportunity in order to afford the relevant South African authorities sufficient time to investigate allegations and to take the necessary pre-emptive actions.

South Africa regards the Final Report of the Expert Panel in a serious light, not only because of its imputations, but also because of the role that South Africa continues to play, both in its national capacity and as the Chair of the African Union, in achieving lasting peace, security, stability and prosperity for the DRC and its people.

The South African Government wishes to reiterate its fullest support for the work of the Security Council inthe achievement of peace, stability and security in the Great Lakes region as a whole, and the Democratic Republic of the Congo in particular. The Government remains ready to assist the Panel in the fulfilment of its mandate.

The South African Government requests that this response be included as an attachment to the Panel's next report as provided for in terms of operative paragraph 11 of resolution 1457 (2003).

United Nations Panel of Experts on
The Illegal Exploitation of the
Natural Resources and other Forms of Wealth
Of the Democratic Republic of Congo

May 2003

Reaction No. 58

OFFICIAL RESPONSE OF THE GOVERNMENT OF THE REPUBLIC OF ZIMBABWE TO ACCUSATIONS LEVELLED AGAINST ITSELF AND ITS NAMED SENIOR OFFICIALS AND FUNCTIONARIES IN THE FINAL REPORT OF THE UNITED NATIONS PANEL OF EXPERTS ON THE ILLEGAL EXPLOITATION OF THE NATURAL RESOURCES AND OTHER FORMS OF WEALTH OF THE DEMOCRATIC REPUBLIC OF CONGO

Mr President,

The Government of the Republic of Zimbabwe presents its compliments to the United Nations Security Council and has the honour to respond to allegations levelled against itself and some of its functionaries in the Final Report of the United Nations (UN) Panel of Experts on the Illegal Exploitation of the Natural Resources and Other Forms of Wealth of the Democratic Republic of Congo (DRC) (S/2002/1146), tabled before the United Nations Security Council (UNSC) on 15 October 2002, and the resultant UNSC Resolution 1457 (2003), adopted on 24 January 2003.

We wish to begin by congratulating the Government of the Republic of Mexico for assuming the Presidency during these very trying times in the international intercourse of national states. In this regard, it is our sincere hope that under your able stewardship, the UNSC will be able to uphold the long established UN traditions of truth, veracity and impartiality on all matters that are presently before it, not least this important matter of the illegal exploitation of the natural resources of the DRC, thus preserving the integrity of the organisation.

Mr President,

The Republic of Zimbabwe notes with grave concern that the Panel of Experts that produced the Final Report elected to ignore our previous repeated submissions and similar public pronouncements at all levels of the DRC Government regarding the transparency and legality of Zimbabwe's involvement in the DRC in all spheres of activity, be they military, diplomatic, political, economic or socio-cultural, to both implicitly and explicitly accuse the Government of Zimbabwe and a number of its named functionaries as being the chief culprits in the activities that were under investigation. It is lamentable that the UNSC, through Resolution 1457 (2003), accepted that Final Report without amendment.

We beg your indulgence, Mr President, if we might appear to be taking this august Council too far back down memory lane, but this historical background is necessary for a full understanding and appreciation of the official position of the Republic of Zimbabwe on the matter that is at issue. This Council would have it on record that Zimbabwe, although not implicated, participated in the debate on the groundbreaking Interim Report of the Panel of Experts on 3 May 2001. On 14 December 2001, in reaction to allegations levelled in the Addendum to that Interim Report tabled before this Council on 13

November 2001, Zimbabwe, through Honourable Dr ISG Mudenge, the Minister of Foreign Affairs, characterised the Addendum as a "hurriedly drawn Zimbabwe-bashing pamphlet." He went on to lay bare, before this august Council, not only what Zimbabwe saw as fatal flaws in the composition of the Panel, its methodologies of inquiry, and its deliberate manipulation of the mandate to suit an ulterior agenda, but also the unquestionable legitimacy of Zimbabwe's military, economic, political and socio-cultural relations with the DRC.

Zimbabwe, on 5 November 2002, once again took part in the UNSC debate on the Final Report (S/2002/1146), tabled on 15 October 2002. On that occasion, we reminded the Council that the Final Report, by the Panel's own unfortunate admission, had followed the tradition of the Addendum in its insistent Zimbabwe-bashing enterprise and, consequently, the observations and comments that we had made in reaction to the Addendum on 14 December 2001 remained pertinent, even though the Final Report had shifted the focus of the enquiry from States to individuals. It follows that all our previous responses, which the Panels that prepared the Addendum and the present Final Report elected to ignore, remain valid and pertinent to the present response. The following considerations, Mr President, underpin Zimbabwe's official position on the matter that is before this august Council.

- The composition, methodologies and investigative parameters of the UN Panels of Experts that prepared the Addendum and this Final Report reneged from the original UNSC mandate. This is why both the subsequent Reports have demonstrably failed to adhere to the precedent, substance and focus of the first Interim Report. This deviation undermines the good intentions of the inquiry, erodes the UN's well-established tenets of impartiality, truthfulness and veracity, and might bring both the Panellists and the UN into disrepute.

- The conclusions reached by the 'Panels of Experts' that succeeded the initial one, which produced the Interim Report, suggest that they deliberately, for it cannot be otherwise, ignored the repeated submissions of both the Governments of Zimbabwe and the DRC to the various stages of the inquiry.

- There is no citable precedent or statute of International Law to preclude both the DRC and Zimbabwe, being legitimate, sovereign and independent states, as well as members of the United Nations, from exercising their sovereign prerogative to invoke relevant statutes of International Law for self-defence when aggressed. Similarly, there are no statutes or obligations that may curtail the two Governments, as sovereign and legitimate corporate personalities, to negotiate and conclude bilateral and multilateral agreements between themselves or with other states and non-state institutions for the purpose of regulating any bilateral activity, be it military, economic, social or political. It follows, therefore, that the conclusions of both the Addendum and the present Final Report on Zimbabwe's bilateral economic and military activities with the DRC represented a flagrant manipulation of International Law in order to criminalise the sovereign and legitimate bilateral relations of the two countries.

Mr President,

With this response, the Government of the Republic of Zimbabwe fulfils its obligation at International Law in accordance with the UN Charter, in view of the relevant operative provisions of Resolution 1457 (2003). We are particularly encouraged by the provision that requires the President to publish this response by 15 April 2003, in the hope that this presents an opportunity for the world to hear and understand Zimbabwe's official position before it is subjected to the dexterous sleight of hand of this, with all due respect to the Secretary General, clearly partisan 'Panel of Experts'.

We wish to place it on record, before this august Council, that Zimbabwe is a victim of a sustained, ruthless and unrelenting multi-pronged campaign by the present Labour Government of the United Kingdom of Great Britain and Northern Ireland, under Tony Blair, to denigrate Zimbabwe and demonise its ruling political leadership. The bigger strategic motive of this campaign is to remove the present legitimate and constitutional Government of President Robert Gabriel Mugabe by any means, including unconstitutional ones, with the underlying aim of defeating or reversing the current Land Reform Programme.

The onset of this campaign coincided, from a historical perspective, with Zimbabwe's military intervention in the DRC from 19 August 1998 and the beginning of the 'fast track' phase of Zimbabwe's Land Reform Programme in 2000. As a result, Mr President, Britain has made no effort to conceal its malicious hand behind the declared and undeclared sanctions that Britain itself, the United States of America, Australia, Canada and the European Union have unilaterally imposed on Zimbabwe.

Mr President,

In this response, we call a spade a spade, and not a digging tool. Our bilateral quarrel with Britain, which we believe to be at the core of the deviance of this Panel, is beyond diplomacy. Therefore, if we may sound undiplomatic, we beg the indulgence of the General Secretariat and the Presidency to bear with Zimbabwe. The Republic of Zimbabwe harbours no intention, nor does it make any nuance at undermining the importance of the matter at hand or the integrity of the UN. In the same vein, the Government of Zimbabwe equally does not condone and will act against any *prima facie* cases of corruption or criminality involving any of its officials or functionaries. However, be that as it may, it equally goes without saying that Zimbabwe reserves the sovereign right at International Law to question the integrity, truth, veracity and impartiality of an 'Expert' Panel that clearly manipulates and oversteps its mandate for the palpable ulterior purposes of rubbishing and criminalising the legitimate bilateral relations of the Republic of Zimbabwe and the Democratic Republic of Congo and, more pertinently, to conscript the UNSC to inadvertently meddle in the internal politics of the Republic of Zimbabwe.

We have never lost sight of the fact that, in the eyes of our international detractors, Zimbabwe has committed two cardinal sins for which it is either already being punished

or is being set up for greater punishment. First, as President Bush of the USA clarified in a recent anti-Zimbabwe address, Zimbabwe's policies infringe US foreign policy. With the benefit of hindsight, and since Mr Bush did not specify those Zimbabwe policies that the USA perceived as threatening its foreign policy, we could not help concluding that our involvement in the DRC could explain the anti-Zimbabwe stance of the US. Second, our current Land Reform Programme is unacceptable to the Blair Government that religiously believes in white supremacy. The moral arguments of our detractors ignore two important facts. First, the Land Reform Programme is redressing a British colonial legacy where a mere 4100 white citizens owned over 70% of the best national arable land, in a country of over 14 million blacks. Second, the Supreme Court of Zimbabwe has since ruled the Land Reform Programme to be legal and constitutional.

Since this Blair Government has set a world record of losing nearly all its diplomatic battles against Zimbabwe over the Land Issue, be it in the Commonwealth, the Non Aligned Movement, the African Union, the Southern African Development Community, and even the International Bar Association and the International Human Rights Association, we were always aware that it would only be a question of time and opportunity before Mr Blair took his dirty undeclared war against Zimbabwe to the august councils of the UN. We were, therefore, not surprised, and take this opportunity to protest and deplore in the strongest terms, that a 'Panel of Experts' that was supposed to act on the mandate of this august Council in addressing the serious concerns raised by the DRC about the looting of its resources by the invading forces of Rwanda, Uganda and Burundi, was hijacked by the UK and its allies. Consequently, the Panel ceased to serve the interests of the DRC, which was and remains the complainant in this case, and came up with judgements and findings that fit the imperial interests of the British Government. If the UNSC accepts the findings of this Panel, therefore, they would be falling into the trap of the hijackers and so, inadvertently endorse British policy on Zimbabwe.

The manipulative hand of the British Government was evident long before the life of this 'Panel'. This Council would recall that from July 1998, the international community, including the UN, failed to come to the assistance of the DRC despite the repeated presentation of compelling evidence proving the aggressive invasion and violation of the territorial integrity of that country by Rwanda, Uganda and Burundi. Instead, the matter was obfuscated and international attention focussed, not on questioning the legitimacy of the military invasion and compelling the aggressor states to cease their aggression, but on rubbishing and vilifying the Government of Zimbabwe, which had responded to the DRC's request for assistance, a right it has at International Law. Regrettably, while the international community was procrastinating and misdirecting its focus towards vilifying Zimbabwe, the invaders were plundering, pillaging and wasting the resources of the DRC. Zimbabwe, therefore, only cautiously applauded this august Council's belated recognition of the fact of the invasion and legitimacy of our intervention through Resolutions 1234 (1999) and 1304 (2000), because we knew all too well that our detractors would be aggrieved and would scarcely rest until they came up with new forms of attack. This is why we have always questioned the capacity of this 'Expert Panel' to adhere to its mandate, the logic of changing the Panel after the presentation of the Preliminary Report, the ever-changing Panels' conception of 'legal and illegal

exploitation', as well as their legendarily palpable sleight of mind with very misleading stereotyped paradigms of inquiry.

And our fears have been vindicated. For it is quite clear from this 'Final Report' that the 'Panel of Experts' has usurped from the DRC, the position of complainant in the illegal exploitation of the resources of that country, compelling even the DRC itself to stand in the dock accused of illegal exploitation of its own resources. But if the DRC cannot exercise sovereignty over its own resources, who will? The plot is, therefore, quite clear – to accept that the DRC has the legitimate right to exploit resources found on its own soil is to accept that Zimbabwe's commercial activities in that country, in partnership with the Government of the DRC, were legal. This the British cannot accept, hence this Panel's decision to ignore the voice of the DRC, especially when it says its agreements with Zimbabwe were legal in terms of DRC law. We, therefore, submit that the UN should acknowledge that the Panel was hijacked by Britain as a way of attacking Zimbabwe's land reform programme.

Mr President,

It is necessary to restate the substantive operative provisions in the original mandate of the Panel of Experts, as well as the terms of reference that were subsequently set for the Addendum, in order to bring into perspective elements of bias, selective interpretation and application, as well as the very high probability of intrigue, that now permeate the Final Report. The mandate and terms of reference were given in the UNSC President's Statements S/PRST/2000/20 of 2 June 2000 and S/PRST/2001/13 of 3 May 2001, respectively. The following are noteworthy:

- The original mandate was issued in response to complaints that were tabled by the Permanent Representative of the DRC Government to the UNSC in letters to its President dated 26 April 2000 (S/2000/362) and 1 June 2000 (S/2000/515). As a result, the Panel of Experts was required to follow up on reports and collect information on all activities of illegal exploitation of natural resources and other forms of wealth of the Democratic Republic of the Congo, including in violation of the sovereignty of that country; to research and analyse the links between the exploitation of the natural resources and other forms of wealth in the Democratic Republic of the Congo and the continuation of the conflict; and to revert to the Council with recommendations within six months.

- The UNSC stressed that the Panel should visit various countries of the region, make contacts with diplomatic missions in the capitals concerned and, if necessary, visit other relevant countries.

- The UNSC further requested the UNSG to appoint the members of the Panel, in consultation with the UNSC, on the basis of the candidates' professional expertise, impartiality and knowledge of the sub-region. It further stipulated that the Chairperson of the Panel should be an eminent personality, with the necessary experience. In his letter of 31 July 2000 (S/2000/796) to the President of the

UNSC, the UNSG duly defended his choice of Mme Safiatou Ba-N'Daw (Cote d'Ivoire) to chair the panel, comprising Francis Ekoko (Cameroon), Mel Holt (USA), Henri Maire (Switzerland) and Moustapha Tall (Senegal).

- That original Panel took time to define, within its given mandate, an appropriate and applicable methodological framework, the spatial and substantive parameters of its inquiry, as well as the key concepts of '***illegality***' and '***exploitation***' before jumping into any stereotyped conclusions or delving into substantive matters. It appropriately interpreted **'illegality'**, in the mandate, as suggesting that only the non-invited forces and their nationals would be possessed of the motive, means and opportunity, at International Law and in terms of the Municipal Law of the DRC, to carryout illegal activities in the DRC.

- Regarding respect for the existing regulatory framework in the country or territory where the illicit operations were alleged to be taking place, the Panel deemed **'illegality'** to be the carrying out of any activity in violation of an existing body of regulations as set by the authorities that are exerting effective power over a given area. It is necessary to stress, here, that the Original Panel never hinted at or attempted to equate the legal status of the rebel administrations in the occupied areas with that of the DRC Government. It follows that the applicable body of statutes in both the occupied and Government areas is the Municipal Law of the DRC and that the current, sovereign and legitimate Government of the DRC is the sole competent authority to administer and enforce that law within the national territory of the DRC, as defined by its international boundaries. This is in spite of the current circumstances of armed rebellion, aggression and occupation, which prevent the Government from effectively exercising that authority over the occupied areas. This point, unfortunately, seems to have evaded the 'expertise' of the new Panels that prepared the Addendum and the Final Report.

- The original Panel defined **'exploitation'**, for purposes of its inquiry, as encompassing all activities that enable actors and stakeholders to engage in business in first, secondary and tertiary sectors in relation to DRC natural resources and other forms of wealth. This broad interpretation enabled the Panel to look into extraction, production, commercialisation and exports of natural resources and other services such as transport and finance.

- The original Panel also considered all business activities conducted in violation of International Law to be illegal. These included forced monopoly in trading, the unilateral fixing of the prices of products by the buyer, the confiscating or looting of products from farmers, and the use of militaries in various zones to protect some interests or to create a situation of monopoly. The Panel then went on to shape its inquiry by utilising all the aforementioned elements of illegality in a complementary manner, and refusing to be exclusive or to focus on any one single element at the exclusion of the others.

- Not surprisingly, the Interim Report produced by that first Panel, presented on 12 April 2001, appropriately indicted Uganda, Burundi and Rwanda and the DRC rebel groups on both the invasion of the DRC and the illegal exploitation of Congolese resources in the occupied areas, and requested the UNSC to consider punitive sanctions.

Mr President,

This Council would recall that the debate that followed the presentation of the Interim Report culminated in the extension of the original mandate for an extra three months, for the purpose of producing an Addendum to that Report. The additional terms of reference included an update on the relevant data and analysis of further information, including as pointed out in the action plan submitted by the Panel to the Security Council; finding relevant information on the activities of countries and other actors for which necessary quantity and quality of data were not made available earlier; a response, based as far as possible on corroborated evidence, to the comments and reactions of the States and actors cited in the report of the Panel; an evaluation of the situation at the end of the extension of the mandate of the Panel, and of its conclusions, assessing whether progress has been made on the issues, which come under the responsibility of the Panel. Zimbabwe had absolutely no quarrel with that mandate.

Our problems began when, except for the operative experts from USA, Switzerland and Senegal, who had been part of the original Panel, the Chairperson and the other senior member of the original Panel, from Cote d'Ivoire and Cameroon, respectively, were dropped from the Panel that then produced the Addendum. They were replaced with an Egyptian Chairman and a Pakistani understudy, so that the new Panel was composed of Ambassador Mahmoud Kassem (Egypt), Chairman; Brigadier General (Ret.) Mujahid Alam (Pakistan); Mel Holt (United States of America); Henri Maire (Switzerland); and Moustapha Tall (Senegal). This Panel was changed, again, for purposes of producing the Final Report, to be composed of Ambassador Mahmoud Kassem (Egypt) as its Chairman, Jim Freedman (Canada), Mel Holt (USA), Bruno Schiemsk (Belgium), and Moustapha Tall (Senegal), including two part-time technical advisors. The latter were Gilbert Barthe (Switzerland) and Patrick Smith (UK) (See Page 5 of Final Report). It is important to underline that whereas the original Panel had conducted its business with a high degree of professionalism, impartiality and transparency, these new Panels struck off at a tangent from those high standards.

Mr President,

This august Council has not been honoured with any explanation as to why the original Panel had to be changed for purposes of producing the Addendum, and again for purposes of producing the Final Report. We, indeed, make this observation with all due respect and with the utmost reluctance, at great risk of being seen to be questioning the sincerity of the United Nations Secretary General, the integrity of the Panellists themselves, as well as the credibility of the United Nations Security Council as the convening authority, because these changes marked the point where the inquiry lost its

purpose and allowed itself to be transformed into a Zimbabwe-bashing weapon. Zimbabwe, as a victim of these changes, has the sovereign right to demand an explanation.

It is our view that precisely because of the original Panel's refusal to exclusively or selectively apply any part of the mandate and the foregoing definitions of illegality and exploitation, it is not difficult to see why the Interim Report indicted the uninvited forces of aggression from Rwanda, Uganda and Burundi, along with their rebel proxies inside the DRC. By contrast, it is equally easy to see why, unless it is accepted that the Addendum and the present Final Report were determined to justify an injustice, no other logic or degree of manipulation could lead any credible Panel to, instead, exonerate the invaders and criminalise the sovereign and legitimate activities of the DRC, as the aggrieved state, and Zimbabwe, its invited ally.

This august Council would recall that the Addendum readily indicted Zimbabwe and studiously exonerated Rwanda and Uganda. The Final Report stuck to that tradition and rubbed home the allegations against Zimbabwe, on very flimsy circumstantial and hearsay evidence based on familiar barroom and opposition gossip. By so doing, the Panels of 'Experts' negated the focus and substance of the original Interim Report and, therefore, effectively nullified its conclusions. To achieve this, the Panel that prepared the Addendum deliberately and selectively interpreted the mandate, ignoring the interpretations of legality and exploitation that were made in the first Report and, instead, concentrated on one aspect of the mandate, namely establishing the link between exploitation and continuation of the war. This was at the expense of the other more fundamental aspects, such as the link between respect for the sovereignty, territorial integrity and independence of the DRC, as well as the legitimacy of its Government, at International Law, with the established facts that Uganda, Rwanda and Burundi, indeed, invaded and occupied the DRC and that they were engaged in fervent illegal exploitation of resources in the occupied areas.

The Addendum Panel admitted that, due to time constraints, its members largely worked individually. It is Zimbabwe's humble submission that this modus operandi played directly into and reinforced the impact of its flawed composition upon the outcome. It would have been easy, as we have the right to suspect under the circumstances, for the American Panellist to push and impose his country's now familiar sinister national agenda that is designed to counter Zimbabwe's Land Reform, cause its economy to collapse and force a change of Government, upon the Senegalese, Pakistani and Egyptian panellists, by simply claiming to be the repository of continuity and experience in the business of the Panel. Zimbabwe is not new to this kind of intrigue, Mr President. This august Council may be interested to know, by way of illustration, that the 'Commonwealth Election Observer Mission' Report that pronounced our March 2002 Presidential Election as having been flawed, unfree and unfair, and, which is at the centre of the current British-orchestrated *brouhaha* about the legitimacy of President Mugabe's rule and, therefore, is now waved to the world as the basis for the declared and undeclared Australian, British, Canadian, USA, and EU sanctions against Zimbabwe, was written at the British High Commission in Harare before the election.

Mr President,

The real intrigue of this whole saga lies in that, with all the wealth of expertise that it purports to possess, this 'Panel of Experts' saw it befitting to send a British national called Patrick Smith, who is listed as a 'Technical Advisor' to the Panel in the Final Report, to Harare for the Zimbabwe part of the investigation. Predictably, this very able advisor, as the Final Report records, claims to have visited the Ministry of Mines, the British High Commission, the Renaissance Bank and a company called Dozer Parts in Zimbabwe. The 'Expert Panel' also records that out of the eleven African States that it had identified as transit points for illicit DRC products, Zimbabwe, along with Mozambique, the Republic of Congo and Tanzania, declined to respond to its questionnaire. We submit that, in the interest of impartiality, it would have been logical for the Panel to visit the Zimbabwe High Commission in London for a reciprocal view, but this was not the case. Instead, the entire record of countries, organisations and individuals who were interviewed by the Panel suggests an inordinate bias towards the British Government and the Zimbabwe Government's local detractors.

This Mr Patrick who, to our knowledge, appeared on the ranks of the Panel from the blue, as distinguished from our own Ian Douglas Smith in Zimbabwe, also signed the Final Report. By contrast, it is illustrative of this cabal, that Gilbert Barthe, a Swiss national who had been on the Panel in the same capacity as Patrick Smith since February 2002 and had signed the Addendum, did not sign that Report. Regarding Mr Smith's exploits in Harare, and his resultant contribution to the Final Report, Zimbabwe demands answers to several fundamental questions that it has already put before this august Council but have largely gone unheeded, before it can start to accord this Panel any shred of respect and, therefore, honour it with a detailed rebuttal of the purported substantive allegations that such a flawed Panel makes. First, why did Gilbert Barthe not sign the Final Report? Second, is it by coincidence or design that Patrick Smith only met British High Commission Staff out of all the many otherwise interested State representatives in Harare? Third, what expertise or privileged information, if any, did the British High Commission have in connection with this matter that other Harare-based foreign State representatives did not have?

It does not surprise us as well, therefore, that the anti-Zimbabwe sentiments that are known to be championed by the USA, Great Britain and the European Union, and which find expression in certain segments of the Zimbabwean local and international academia, the declared political agenda of the British-sponsored opposition Movement for Democratic Change (MDC) and the externally funded non-Governmental Organisations and so-called 'independent' local and international media houses, pervaded the Addendum, and have somehow also subtly crept into this Final Report. For this reason, it is clear that both the Addendum Panel and the one that produced the Final Report opted to depart from their mandate to reduce themselves to mouthpieces of the opposition and detractors of the Government of Zimbabwe. This amounts to a naked attempt at coaxing such a noble institution as the UN to unwittingly interfere in the internal affairs of a member state, and it is inexcusable.

Mr President,

This august Council would recall that on 14 December 2001 the Delegation of Zimbabwe led by the Minister of Foreign Affairs, challenged and dismissed with all the contempt that it deserved, the vitriol about Zimbabwe's internal politics that permeated the Addendum to the Preliminary Report. It is largely because, in our view, this Council did not take a pause to censure the new Panel back into line, before issuing a fresh mandate, that this Panel became a runaway horse with its dexterity with stereotyped concepts, paradigms of inquiry and wrongful interpretations of its mandate. It is indeed illustrative of the Panel's insistent palpable penchant for intrigue that it cites two letters, purporting to have been originated by Zimbabwe's Minister of Defence, in its Final Report. In the first, the Minister is purported to be thanking Mr Al-Shanfari for the support he rendered during the June 2000 Parliamentary Elections. The intriguing thing about this piece of evidence is not only that it is totally irrelevant to the mandate of the Panel but rather, that the Panel subtly throws in the conclusion that such support as Mr Thamer is purported to have provided to the Government of Zimbabwe contravenes Zimbabwean Electoral Law. Clearly, this suggests a deliberate attempt to meddle in the internal politics of Zimbabwe (Pages 6-8).

The second, by the sheer number of times that it is cited, seems to be the main source of the Panel's conclusions on Zimbabwe's so-called asset-stripping strategies, clandestine corporate disguises of its activities and its contingency plans to maintain a covert military presence after the withdrawal of the ZDF (Page 9). In the memo, an unnumbered and unsigned copy of which has since been availed to Zimbabwe's Permanent Mission at the UN, the Minister of Defence is purported as requesting the President's intervention in resolving some three outstanding issues in the bilateral relationship with the DRC. The Panel also cites eyewitness accounts and, more pertinently, claims to have in its possession bank records and other documentary evidence, to substantiate most of its allegations against the Zimbabwe Government, its functionaries and its alleged corporate affiliates. Add Mr Patrick's Houdini act in Harare to this heap of uncorroborated circumstantial and hearsay evidence, it becomes easy to understand the hatchet job on Zimbabwe that both the Addendum and the Final Report have been reduced to.

Mr President

This brings us to the paradigm of inquiry that this 'Panel of Experts' elected to use (Page 7). In paragraph 5 of the Final Report, the Panel states that it 'determined that a central focus of its work should be gathering information about politically and economically powerful groups involved in the exploitation activities.' It goes on to add that the Panel developed the central concept of 'elite networks' as an operational thesis. This august Council has not been honoured with any explanation as to why and on what basis this Panel made such a determination, which clearly abandons the definitions of '**illegality**', '**illegal exploitation**', and '**exploitation**', set by the original Panel. Clearly, this Panel, in the odious tradition of the Addendum, arrogated unto itself the power to issue itself a different mandate, contrary to its Security Council mandate as reproduced in Paragraph 1

a-d of the Final Report. For this final Panel, '**legal**' and '**illegal exploitation**' meant the same thing, hence the interchangeable use of the terms '**exploitation**' and '**illegal exploitation**' throughout the Final Report. In our view, this confusion of concepts cannot be attributable to ignorance, especially when it comes from a collection of the best group of 'experts' that this whole wide world could produce for the task at hand. The reality is that the confusion is the height of mischief, aimed at condemning the innocent and assuaging the guilty.

By natural extension, spatially, the 'elite networks' paradigm leaves the Panel no option other than dividing the DRC into three geographical areas. These are the Government-Controlled Area, the Rwanda-Controlled Area and the Uganda-Controlled Area. This enables the Panel to identify three so-called 'elite networks' that it purports to be operating from and inside each of these three geographical areas. Similarly, the panel then manipulates the locus of all Zimbabwean bilateral activities in the DRC to lie within the Government-Controlled Area. By predictable logic, therefore, the Panel goes on to label every DRC or Zimbabwean Government official who ever took part in a bilateral meeting between the Governments of the DRC and Zimbabwe, or in any other activity within the ambit of the growing relations between the two countries as a member of the 'elite network' and, hence, a beneficiary of the 'illicit' proceeds.

The Panel singles out Honourable ST Sekeramayi (Minister of Defence), Honourable ED Mnangagwa (former Minister of State Security and Justice, Legal and Parliamentary Affairs and now Speaker of Parliament), General VMG Zvinavashe and 'his family', Air Marshall P Shiri, Major General C Dawuramanzi, Brig SB Moyo, Group Captain Mike Moyo, Air Commodore MT Karakadzayi, Colonel SS Nyathi and Colonel (Retired) Tshinga Dube in connection with a plethora of allegations. Several of the officials and functionaries who appear in the body of the Report, however, do not appear on the final list of persons against whom the Panel recommends international travel and financial restrictions (Page 8).

Entrepreneurs such as George Forrest, John Arnold Bredenkamp, Thamer Said Ahmed Al-Shanfari, Nico Shefer, and Billy Rautenbach are featured prominently in the Report, as members of the Government area 'elite network'. The evidence adduced in relation to the activities of each of them appears to be deliberately manipulated to fit the common theme of providing the corporate disguise for Zimbabwe's illicit commercial activities in the DRC. The Panel goes to great lengths to draw links between some of these businessmen and a Ukrainian arms dealer called Leonid Minim, as well as a Lebanese triad of Abmad, Khanafer and Nassour crime families. The Panel hastens to highlight links between these Lebanese crime families with Hezbollah and Amal, organisations that appear on President Bush's 'Axis of Evil' (Page 8).

The Panel further develops its 'elite networks' paradigm to identify what it regards as the strategies and sources of revenue that the networks employ. It goes on to identify companies that it regards as having been set up specifically for the purpose of asset stripping from DRC State mining companies, elaborate cartels for the control of procurement and accounting, companies that use the corporate façade to conceal their

criminal activities, the link between mining revenues and the military and what it calls diamond-based commercial chains. It also goes to great lengths to blame the current humanitarian crisis in the eastern DRC on the exploitative strategies of the 'elite networks' and lack of central Government control over the Congolese State's full revenue potential. All Zimbabwean companies and individuals who have ever done any business in the DRC under the COSLEG umbrella, including any individual entrepreneurs or private companies with which there has ever been any hint of contact, are mentioned in line with one allegation or another. The list includes a company that is purportedly operating 'under a high degree of secrecy' as Dube Associates to exploit a diamond concession in Kalobo, in Kasai, which the Panel links to Colonel Tshinga Dube of Zimbabwe Defence Industries. Enough has already been said above regarding Mr Patrick Smith's caballing Houdini act in Harare that produced the litany of falsehoods that this Panel is prepared to wave before this Council as proving Zimbabwe's guilty.

Mr President,

We wish to make the following five assertions very clearly at this juncture:

- First, we have stated this in no uncertain terms before, and repeat it now, that Zimbabwe owes no one any apology or explanation about its bilateral relationship with the sovereign and legitimate Government and people of the DRC. We, therefore, deplore and condemn this Panel's grand design to give 'terrorist' and organised crime characteristics to our very legitimate and above board activities in the DRC, as well as portraying them as inconsiderate, if not responsible, for the eastern DRC's humanitarian crisis.

- Second, we also deplore and condemn the Panel's predictable paranoic obsession with Zimbabwe-bashing, as evidenced by the nuances at the overly familiar accusations about bad governance, violations of human rights and disrespect for the rule of law, as well as the existence of sanctions-busting operations, that permeate the Final Report.

- Third, it is our sovereign right to enter into strategic partnerships with any private entrepreneurs or company of our own choosing, for purposes of pursuing and fulfilling our national interest in any part of the world, the DRC included. It follows that, whereas it would be the corporate prerogative of the companies and entrepreneurs that are named in the report as our associates in one way or another to respond to the allegations in any way they consider to be appropriate, it is equally our sovereign prerogative to resist this palpable attempt by this partisan Panel to use the well-intentioned mandate of this Council for the ulterior purpose of supplementing the idleness and incompetence of British intelligence with information that is vital to our national interests. We therefore refuse, categorically, to answer for the named private corporate entities and individuals.

- Fourth, regarding the issue of sanctions, and the allegations or nuances that the Panel makes as suggesting that Zimbabwe has been busting or violating them, we

need not remind this august Council that Australia, Britain, New Zealand, the EU and the USA are not the whole world. Although they routinely arrogate unto themselves the power to speak and act as such, they are not legally competent at International Law to do so. It is an undisputable fact that these sanctions in question, which are racially motivated under British orchestration, are a subject of fervent debate and are not acceptable to the larger part of the international community. They are unilateral and, by no means, UN sanctions. This Panel's attempt to coax the UNSC to enforce a regime of sanctions that it has not seen fit to mandate stinks and is clearly undeserving of our response.

- Finally, considering the litany of intrigue that we have exposed this Final Report to be and the fatal flaws that we have highlighted in the Panel's composition and methodologies of inquiry, Zimbabwe will not allow any of its named individual Government officials to answer to the allegations levelled against them. We further justify this course of action in the succeeding paragraphs, where we expose the Panel's intrigue on nearly all the named officials.

Mr President,

The success of our military campaign in the DRC rested on three mutually interdependent pillars of control. At the apex of this triangle sat the political direction of the war, as represented by the two Heads of State and their Cabinets. At the bottom of that triangle, on one side sat the operational level, which actually implemented the campaign. On the remaining side sat the sustainment of the war effort, encompassing all logistics, finance and personnel requirements. While we had no difficulty with the first two aspects, the final aspect exerted both Governments to the limit. The two Governments agreed, from the outset, to set up a management structure that was charged with overseeing that the three aspects worked in unison for the strategic goal of sustaining the war effort.

It so happened, in those early stages, that the focus of our main effort in the diplomatic field sought to convince the world about the legitimacy of the SADC Allies military intervention in support of the DRC, which had been invaded by three of its neighbours. This proved very difficult to a world that, thanks to the night errands of our powerful detractors, procrastinated over the fact of invasion and, hence, the DRC's right to self-defence. The two Governments agreed that each side would appoint a Steering Committee, headed by the two Ministers of Justice, Legal and Parliamentary Affairs, deputised by the Ministers of Defence, to oversee the campaign. In the case of Zimbabwe, **Honourable ED Mnangagwa**, as the Minister of Justice, Legal and Parliamentary Affairs then, before the post-June 2000 Parliamentary Elections Cabinet reshuffle, co-chaired the sessions of this Steering Committee with his DRC counterpart. The late Minister of Defence, **Honourable M Mahachi**, deputised him. After Honourable Mahachi's untimely death in a traffic accident, **Honourable Dr ST Sekeramayi** became the Minister of Defence, coming from his former portfolio of Minister of Mines and Energy.

General VMG Zvinavashe, the Commander Defence Forces, also sat on this Committee in his capacity as the overall General Commanding Officer of the entire SADC Allied war effort. **Air Marshall P Shiri** was the Campaign Commander of the ZDF contingent in the DRC. **Brigadier SB Moyo** was appointed to, and still holds, the post of Senior Personal Staff Officer in the CDF's Office, responsible for the DRC Campaign. His functions included advising the CDF on campaign matters as well as the commercial activities that were put in place for the DRC to be able to afford the costs of its defence in the face of external aggression. **Air Commodore MT Karakadzayi** was and still is the Deputy Secretary (Policy and Procurement) in the Ministry of Defence. **Colonel SS Nyathi**, similarly, is the Director Defence Policy in the ZDF Headquarters, which is integrated with the Ministry. The Policy Department handles all defence-related aspects of Zimbabwe's foreign relations. **Group Captain Mike Moyo** served with AFZ logistics. **Colonel (Rtd) Tshinga Dube** heads the Zimbabwe Defence Industries. Of all the officers named in the Report, only the now late **Major General (Rtd) CD Dawuramanzi**, had to be recalled from retirement to spearhead the formative stages of the Minerals Buying Company, all above board.

Mr President,

The DRC Government, and not Zimbabwe, initiated the idea of joint economic ventures for the purpose of using its own national resources to be able to sustain the protracted defensive war effort against the invading forces of Burundi, Rwanda and Uganda and also be able to repair our besieged economies. On 8 December 2000, the two Governments signed a Memorandum of Understanding on Joint Military and Economic Cooperation. Among the key operative provisions of this MOU was a requirement for the establishment of an Implementation Committee charged with oversight of the joint ventures. This MOU, besides removing any doubt on the legitimacy of the joint ventures, also became the main regulative legal and administrative instrument for the transition from the leading role that the military had played at the height of the campaign to a new leading role for the civil ministries, particularly the Ministry of Finance and Economic Development in the case of Zimbabwe. Now, Mr President, as the above explanation would clearly show, this Panel elected to take all the officials who worked on the campaign management structures, in whatever capacities, and assign unsavoury labels to them, while spinning a litany of yarns that would portray them either as criminal or corrupt. We have every right to regard such a Panel with the highest degree of contempt. The succeeding paragraphs may help to shed more light as to why this should be the case.

Firstly, the Panel records that **Honourable Dr ST Sekeramayi**, MP, is a shareholder in COSLEG and coordinator of 'the military leadership of Zimbabwe's illicit commercial activities in the DRC' (Page 8). True, at one time, the Ministry of Defence coordinated all of Zimbabwe's commercial activities in the DRC. This, however, changed in early to mid-2002 as the legal and administrative instruments of the partnership were being established and the military arm became subservient to other prongs of Zimbabwe's national strategy in the DRC. The Ministry of Defence formally handed over control of the joint ventures to the Ministry of Finance and Economic Development, which is now

overseeing the implementation of the MOU. The Panel's attempt to link the imminent withdrawal of the ZDF from Mbuji-Mayi to the conclusion of new trade and service agreements in August 2002 is farfetched and unfounded (Page 6). The agreements that this Panel is trying to sully were, in fact, signed at Nyanga, in Zimbabwe, at a meeting that was attended by no less than 11 substantive Ministers and 3 Deputy Ministers from the Congolese side and an almost equal number of their Zimbabwean counterparts, on a reciprocal basis (Page 6). This was part of the overall process of the devolution from military to civilian control, as well as consummating the legitimacy of our partnership at International Law. The two Governments made no secret of these Agreements, which are annexed to the original MOU.

To the uninitiated, it might seem as though the British High Commission or its MDC proxies were not aware of the above facts when Mr Patrick Smith paid his fleeting night call to make his biased rabid appraisal of Zimbabwe. Such a view, however, ignores the real intrigue in the Panel's Report. The British High Commission was obviously aware of these facts, but going into all the above detail would have defeated the broader purpose of portraying the joint ventures as military affairs designed to finance and prolong the DRC war.

The fact that Honourable Sekeramayi may be a shareholder in COSLEG does not make him a beneficiary of any of the proceeds of the joint ventures, as is, in fact, the case with all the other officials of the Zimbabwe and DRC Governments who are named as enjoying the same status. If the Panel had been possessed of the right motive, dignity and professional rectitude to seek corroborating evidence and to verify the litany of gossip and hearsay that it elected to stake its credibility on, it would have found that the joint ventures between the DRC and Zimbabwe are not predicated upon the perpetuation of Zimbabwe's military presence. Rather, they are based on legitimate bilateral Agreements, which adhere to the statutes of the International Law of Treaties, as well as the rigorous processes that are enshrined in the Municipal Statutes of both the DRC and Zimbabwe. The Panel would also have established that the ultimate negotiated and agreed overall share structure is 51%:49% in favour of the DRC, and that there is absolutely no basis for the falsehood that it began to peddle in the Addendum that, because the agreements appear to have been entered under duress of Zimbabwe's military presence, therefore the Congolese partner is marginalised.

Without necessarily going into all the complexities of each of the ventures, that neither the Zimbabwe Government nor the DRC Government is named anywhere as having a direct shareholding in any of the ventures is immaterial because it does not make the findings of the Panel any more exciting or germane. The Panel would have found that in all cases, while the line ministries in both countries are naturally responsible for coordinating the policy framework within which the joint ventures operate, there is no ministry, minister or military institution or officer of any rank, who benefits directly from the ventures. Cases in point include the joint ventures between such entities as Air Zimbabwe and its Congolese counterpart (LAC), the Zimbabwe Electricity Supply Authority and its Congolese equal (SNEL), or between the Zimbabwe Civil Aviation Authority and its DRC counterpart. Further, and most pertinently, if the Panellists indeed

possessed the right credentials, and if they had examined the relevant statutes in the DRC, they would have discovered that Congolese law requires a minimum of seven directors to register a SARL (public) company.

The foregoing explains why certain officers, like the late Colonel Francis Zvinavashe, the late Major General (Rtd) CD Dauwramanzi, General VMG Zvinavashe, Honourable Sekeramayi and others would be listed as **nominal shareholders** on the articles of association, hence the 0.000+ share that is attributed to at least two individual nominees on either side in all the established joint venture companies. Mr President, nominees are not entitled to a dividend and, without seeing the ulterior motive, there is no other logic for the Panel's accusations.

The Panel, secondly, labels **Honourable ED Mnangagwa,** the Speaker of Parliament and former Minister of State Security, as 'enjoying support from senior military and intelligence officials for aggressive policies in the DRC' and 'the key strategist for the Zimbabwean branch of the Government Area elite network' (Page 8). It conveniently omits any mention of the fact that prior to his present post he was the Minister of Justice, Legal and Parliamentary Affairs, hence his leading role in the management of the DRC Campaign at the material time. The Panel goes on to spin a yarn that would beat any best selling work of fiction about his alleged involvement in graft, money laundering, the smuggling of illicit diamonds, illegal foreign exchange deals, sanctions busting and arms smuggling, citing what it boasts to be eyewitness evidence confirming times, places and circumstances (Page 12).

As noted above, however, this has since changed. Honourable Mnangagwa has since handed over that responsibility to the Minister of Defence, who has in turn handed over to the Minister of Finance and Economic Development. It is illustrative of this Panel's penchant for intrigue that, again, in its morbid headlong rush to portray Zimbabwe's bilateral relations with the DRC as dependent on our continued military presence there, it does not offer any evidence to substantiate its allegations about the support that Honourable Mnangagwa is painted as enjoying from the military. It is, indeed, equally deplorable that the Panel alludes to Zimbabwe's 'aggressive policies in the DRC', without proffering even a shred of evidence to this effect. This stinks as a palpable attempt at cajoling this august Council to count Zimbabwe among the aggressors, instead of invited defenders of the DRC's sovereignty. Our position on the Panel's purported evidence follows below.

Thirdly, by labelling **General VMG Zvinavashe,** the Commander of the Zimbabwe Defence Forces, as a 'key ally of the Speaker' and one whose family is engaged in 'diamond trading and supply contracts in the DRC' the Panel tries to rub home its stereotype of military-led high level corruption, criminality and cronyism in Zimbabwe (Page 8). What this Panel deliberately launders from its evidence and fails to tell this august Council is that General Zvinavashe is a well-established businessman providing transports and even schools, in Zimbabwe and the SADC region at large. It follows that, if at all one or some of his companies have conducted business in the DRC, the fact that he is an executive director of COSLEG, an ally of the Speaker or the Commander

Defence Forces does not render such business automatically criminal or corrupt under the mandate of the present inquiry. We also believe that the allusion to his family being involved in diamond trading stems from the mere fact that his late younger brother, Colonel P Zvinavashe, a lawyer by profession, was at one time a Corporate Secretary of COSLEG. It is clear, and morally reprehensible, that the Panel only chose to make this nuance at corruption because going into detail about the late Colonel's qualifications and appointment would have shown that his ascent was based on qualification and merit, and not because of his relation to the CDF.

Fourthly, the Panel makes no effort to hide its central motive, regarding the manner in which it drags **Air Marshall P Shiri**, the Commander of the Air Force of Zimbabwe, into its yarn of accusations. The Air Marshall is labelled as 'a close ally of President Mugabe', as well as 'one of the close circle of military officers who have turned Harare into a significant illicit diamond trading centre', and accused of everything ranging from organising clandestine support for Burundian armed groups to sanctions busting (Page 8). The Panel, quite predictably, adduces no shred of evidence to substantiate these allegations. The truth is that Air Marshall Shiri's portfolio, as the Commander of the AFZ, would have placed him on the frontline in the DRC at one time or the other while the war was still on. His presence at the frontline does not, however, make him automatically capable or guilty of any of the things that he is accused of by this partisan Panel. The allusion to his friendship to the President and Commander-in-Chief is an insult to our Constitution, as well as structures and processes of governance. This august Council would be pleased to learn that Air Marshall Shiri is not on the COSLEG structure, in any capacity whatsoever and, to our knowledge, he has not reaped any personal gain from the joint ventures. Accusing him of turning Harare into a significant illicit diamond market, therefore, can only be a figment of the fertile imagination of this Panel and its dubious sources because that sort of line fits perfectly into the Panel's warped logic.

Fifthly, the litany of accusations against **Brigadier SB Moyo** and **Group Captain Mike Moyo** equally reeks of intrigue. The substance of the accusations pales into insignificance when one exposes that the Panel, in its naivety, concludes, by implication, that the two must be relations of some sort, which is not the case (Page 8). It is illustrative that whereas the Group Captain is not mentioned anywhere in the body of the Final Report, he suddenly appears from nowhere, without any justifying argument or evidence, on the list of officials against whom the Panel recommends punitive UN action. The Panel painstakingly evades the fact that it would have been perfectly normal at the material time, as part of his official function, for Group Captain Mike Moyo to be involved in the logistics of the joint ventures, including the coordination of the transportation of mining equipment for Sengamines by AFZ aircraft. Similarly, it is not automatically criminal, as this Panel would want this august Council to believe, that as part of Brigadier SB Moyo's official function, he might be seen engaging in regular contacts, or even negotiating the details of one or two contracts with his counterpart in the DRC.

Sixth, **Air Commodore** MT **Karakadzayi** and **Colonel** SS **Nyathi**, as part of their official functions, are designated members of the Secretariat of the Implementation Committee for the DRC-Zimbabwe Memorandum of Understanding on Joint Military Cooperation cited above. This Panel, however, because of its overall aim of criminalising their role, suffixes **'for COSLEG'** to their appointments. In the Final Report, the Air Commodore is addressed as the 'Deputy Secretary Policy and Procurement for COSLEG' and the Colonel, similarly, is referred to as the 'Director Defence Policy for COSLEG'. This sleight of hand with words, Mr President, is meant to portray these officials as dedicated operatives of Zimbabwe's efforts to loot the DRC's natural resources. Such gross misrepresentations are unforgivable, especially when coming from a Panel of supposed 'experts'. We could go on to treat all the other named officials on a case-by-case basis, but you can be assured that we would expose the same pattern of intrigue attributable to this Panel.

Mr President,

The Republic of Zimbabwe wishes to draw the following conclusions from the foregoing:

- This 'Panel of Experts' has clearly abused its mandate. Clearly, by playing with and taking refuge behind the well known tyranny of concepts, this Panel has misled this august Council. It has systematically and deliberately reneged from its mandate, including the definitions of legality, exploitation and illegal exploitation set by the original Panel, whose findings it was mandated to consummate, to impose its own logic and direction upon the inquiry. It, therefore, behoves this august Council to censure this Panel and call it back into the line of the Interim Report.

- It is beyond dispute that both the Addendum and the Final Report have unearthed evidence that, if properly applied, would have completed and added the intended value to the original findings of the Interim Report. Unfortunately, it is our very strong view that our detractors got their way and turned this Panel into yet another Zimbabwe-bashing weapon. We submit that enough evidence on the subject of inquiry has already been gathered in the three reports to enable this Council to take the relevant decisions and actions on the matter before it. We would also like to highlight the danger of this Panel starting to make pretences at turning itself into a permanent organ of the Security Council by simply manipulating its mandate and playing havoc with concepts, while knowing all too well that such confusion would inevitably force the UNSC to continue extending its mandate.

- Both the DRC and Zimbabwe are legitimate, sovereign and independent states. Both of them are equal and sovereign members of the United Nations family of nations. It follows that, in the context of the present Inquiry, there is no citable precedent or statute of International Law that precludes the two countries from exercising their legitimate and sovereign right to invoke relevant statutes of International Law for self-defence when aggressed. Neither are there any statutes or obligations that may curtail the corporate personality of their legitimate and

sovereign Governments to negotiate and conclude bilateral and multilateral agreements between themselves and with other states and institutions. The analytical paradigm of 'elite networks' used by this Panel, therefore, seeks to negate this reality and imposes upon a perfectly noble inquiry, the warped logic of labelling the DRC, which is the original victim and complainant, as the chief culprit. Zimbabwe, Mr President, is in the DRC at the express invitation of the legitimate, sovereign and internationally recognised Government. We have nothing to hide, have committed no crime in the DRC and do not owe anybody an apology for our being there. To try to turn all Government officials who have been on the campaign management structures into criminals, as this Panel has done, is an unforgivable travesty of International Law.

- Clearly, to our mind, the puppeteers who have been manipulating the work of this Panel since the Addendum see way beyond merely criminalising, rubbishing and demonising Zimbabwe's bilateral relations with the DRC, which they have done quite effectively with this Final Report and the resultant Resolution 1457 (2003). Their real underlying aim, which may not be obvious to many in this august Council, is to destabilise Zimbabwe by instigating the Government to conduct a witch hunt amongst its high ranking officials. This in turn, according to their warped logic, would feed into the unpatriotic opposition politics that they are actively sponsoring. Zimbabwe will not be a party to this charade. As victims of this sustained British-orchestrated anti-Zimbabwe campaign, we are more qualified than anyone else to see every cog and appendage of the juggernaut that Britain has launched in our direction. We equally deserve the ear of this august Council, when we sound warning, as we have done in this submission that our detractors are trying to conscript it to meddle in our internal affairs against all established norms of international behaviour and the existing body of International Law.

- The picture painted of Zimbabwe in this Final Report is deliberately designed to mislead and divert the world's attention from the real purpose of this noble inquiry. This Final Report is, therefore, manifestly a travesty of International Law. The Panel that prepared it has sacrificed its integrity for reasons best known to its members. Consequently, we deserve to be forgiven for having lost all respect for this Panel and holding it, along with its trumped up product that purports to be the Final Report of this noble inquiry, in very high contempt.

- The Government of the Republic of Zimbabwe shall, therefore, not debase itself to give any unwarranted credibility to the litany of accusations that the Panel paints. The onus is on the Panel to first fulfil its obligation under Resolution 1457 (2003), to hand over all the evidence that it claims to have gathered. In this regard, Zimbabwe demands all that evidence, including names, times, places and circumstances in which the hearsay or eyewitness evidence cited or suggested in the report may have been gathered. Once in possession of that purported evidence, the Zimbabwe Government undertakes to act in any way it deems fit, in line with the country's Municipal Law and within the ambit of its sovereign prerogative.

against any *prima facie* cases of corruption or criminality involving any of the named officials.

The Government of the Republic of Zimbabwe avails itself of this opportunity to renew to the Presidency of the United Nations Security Council and the Secretary General of the United Nations the assurances of its highest consideration.
